

No. 11025

2411

United States
Circuit Court of Appeals

For the Ninth Circuit.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellant,

vs.

CRAWFORD AND DOHERTY FOUNDRY
COMPANY, an Oregon corporation,

Appellee.


Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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BARRETT RANDALL and WILBER HEN-
DERSON, Porter Building, Portland, Oregon,
for Appellee.

In the District Court of the United States
for the District of Oregon

Cir. No. 2124

PRENTISS M. BROWN, Administrator, Office of
Price Administration,

Plaintiff,

vs.

CRAWFORD AND DOHERTY FOUNDRY
COMPANY, an Oregon Corporation,

Defendant.

COMPLAINT

Plaintiff for its first cause against defendant
alleges and respectfully shows the court as follows:

I.

In the judgment of the Administrator, the defendant has engaged in actions and practices which constitute a violation of Section 4(a) of the Emergency Price Control Act of 1942 (Pub. L. 421, 77th Cong., 2nd Sess., 56 Stat. 23), hereinafter called "the Act," in that the defendant has violated Revised Price Schedule No. 4—Iron and Steel Scrap, as amended (7 Fed. Reg. 1207), effective in accordance with the provisions of the Act; and therefore, pursuant to Section 205(a) of the Act, the Price Administrator brings this action to enforce compliance with said Schedule.

II.

Jurisdiction of this Court is conferred upon this Court by Section 205(c) of the Act.

III.

At all times mentioned herein there has been in effect, pursuant to the Act, Revised Price Schedule No. 4—Iron and Steel Scrap, as amended (7 Fed. Reg. 1207), establishing a maximum price for each of various grades of iron and steel scrap. [1*]

IV.

Since on or about February 21, 1942, defendant has purchased and accepted delivery of iron and steel scrap at prices in excess of the maximum prices therefor established by Revised Price Schedule No. 4.

For its second cause of action against defendant plaintiff alleges and respectfully shows the court:

I.

In the judgment of the Administrator, defendant has engaged in actions and practices which constitute a violation of Section 4(a) of the Emergency Price Control Act of 1942 (Pub. L. 421, 77th Cong., 2nd Sess., 56 Stat. 23), hereinafter called "the Act", in that defendant has violated the General Maximum Price Regulation, as amended (7 Fed. Reg. 3153), and Maximum Price Regulation No. 244—Gray Iron Castings, as amended (7 Fed. Reg. 7871), effective in accordance with the provisions of the Act: and therefore, pursuant to Section 205(a) of the Act, the Administrator brings this action to enforce compliance with said Regulation.

II.

Jurisdiction of this Court is conferred upon this Court by Section 205(c) of the Act.

III.

From and including May 11, 1942, until October 26, 1942, there was in effect, pursuant to the Act, General Maximum Price Regulation, as amended (7 Fed. Reg., 3153), establishing the maximum price for various commodities, and specifically gray iron castings, including Meehanite castings, and that the maximum price thereof, established by said General Maximum Price Regulation, is the highest price for which said commodities were sold during the month of March, 1942, by defendant to a purchaser of the same class.

IV.

From and including May 11, 1942, until October 26, 1942, the defendant, doing business in the State of Oregon, sold and delivered Meehanite gray iron castings to Tuerek-Mackenzie Co. and Bingham Pump Co., both of Portland, [2] Oregon, and others, at prices higher than the maximum prices for which defendant sold said commodities to a purchaser of the same class during the month of March, 1942, and therefore at prices higher than the maximum prices therefor established by said Regulation and the amendments thereto.

V.

From and including October 26, 1942, to date of this complaint, there has been in effect, pursuant

to the Act, Maximum Price Regulation No. 244, Gray Iron Castings, as amended (7 Fed. Reg. 7871), establishing maximum prices for the sale of gray iron castings, including Meehanite castings, and that the maximum price for each of such castings as established by said Maximum Price Regulation No. 244 is the highest price for which substantially the same casting was sold by defendant to a purchaser of the same class during the period from August 1, 1941, to February 1, 1942, inclusive.

VI.

From and including October 26, 1942, to the 11th day of March, 1943, the defendant, doing business in the State of Oregon, sold gray iron castings, including Meehanite gray iron castings to the Tuerck-Mackenzie Co., Willamette Iron and Steel Corporation, and the Bingham Pump Co., all of Portland, Oregon, and others, at prices higher than the maximum prices for which defendant sold or offered substantially the same commodities to purchasers of the same class during the period from August 1, 1941, to February 1, 1942, inclusive, and therefore at prices higher than the maximum prices therefor established by said Regulation and the amendments thereto.

For its third cause of action against defendant, plaintiff alleges:

I.

Plaintiff, as the Administrator of the Office of Price Administration, brings this action for treble damages on behalf of the United States, pursuant

to the provisions of Section 205(e) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2nd Sess., 56 Stat. 23) enacted January 30, 1942, and hereinafter called "the Act." [3]

II.

Jurisdiction of this Court is conferred upon this Court by Sections 205(c) and 205(e) of the Act.

III.

Plaintiff incorporated herein by reference as if fully set forth herein the provisions of Paragraphs III, IV, V, and VI of the Count Two.

IV.

Certain of the transactions referred to in Paragraph IV and all of the transactions referred to in Paragraph VI of Count Two occurred more than six months after the date of approval and enactment of the Act. None of said purchases was made for use or consumption other than in the course of trade or business.

V.

Three times the aggregate amount by which the prices received by the defendant in the transactions referred to in Paragraph 4 of this Count exceed the maximum prices provided by the General Maximum Price Regulation, as amended, and Maximum Price Regulation No. 244, as amended, equals \$48,505.62. By Order 12-12-44 V.O.B.

Wherefore, the Administrator prays for a preliminary and final injunction enjoining the defend-

ant, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with the defendant from:

(1) Directly or indirectly purchasing, offering to buy, or accepting delivery of any iron and steel scrap at prices in excess of those established by Revised Price Schedule No. 4, as amended (7 Fed. Reg. 1207), or otherwise violating said Schedule or attempting to do anything in violation thereof, or in violation of any Regulation or Order Issued pursuant to the Act establishing maximum prices for iron and steel scrap as heretofore or hereafter amended; and from

(2) Directly or indirectly selling or delivering, or offering to sell or deliver, gray iron castings, including Meehanite castings, at [4] prices higher than the maximum prices established therefor by Maximum Price Regulation No. 244, as amended (7 Fed. Reg. 7871), or otherwise violating said Regulation, or attempting, or agreeing to do anything in violation thereof or in violation of any Regulation or Order issued pursuant to the Act, establishing maximum prices for gray iron castings, including Meehanite castings, as heretofore or hereafter amended.

Judgment on behalf of the United States against the defendant in the sum of \$48,505.62.

By order 12-12-44 V.O.B.

/s/ MEYER C. SYMONDS

/s/ THADDEUS W. VENESS

/s/ McDANNELL BROWN

/s/ F. E. WAGNER

[Endorsed]: Filed July 31, 1943. [5]

[Title of District Court and Cause.]

SECOND AMENDED ANSWER

Defendant, for second amended answer to plaintiff's complaint heretofore authorized by court, admits, denies and alleges:

AS TO FIRST CAUSE OF ACTION

I.

Denies Paragraph I.

II.

Denies Paragraph II.

III.

Admits Paragraph III.

IV.

Denies Paragraph IV.

AS TO SECOND CAUSE OF ACTION

I.

Denies Paragraph I.

II.

Denies Paragraph II.

III.

Admits Paragraph III.

IV.

Denies Paragraph IV.

V.

Admits Paragraph V.

VI.

Denies Paragraph VI. [6]

AS TO THIRD CAUSE OF ACTION

I.

Denies Paragraph I.

II.

Denies Paragraph II.

III.

Defendant, in answer to Paragraph III, pleads to the allegations incorporated therein by reference as defendant admitted or denied the paragraphs referred to.

IV.

Denies Paragraph IV.

V.

Denies Paragraph V.

FIRST AFFIRMATIVE ANSWER

Defendant, for further and separate answer, alleges:

I.

That prior to the 31st day of March, 1942, defendant was operating and conducting its business on the basis of an agreement as to wages with its employees expiring as of March 31, 1942, and all prices for goods, wares and merchandise manufactured and sold by it were based upon the cost of material and labor fixed by agreement subsisting as of that time.

II.

That prior to the 31st day of March, 1942, defendant had been negotiating for a new agreement as to wage rates, which said agreement was not concluded until the 29th day of August, 1942, but which agreement at that time comprehended a scale of wages which became retro-active to the 1st day of April, 1942, or the date of the expiration of the preceding or old wage agreement.

III.

That based on the trend of the negotiations up to that time, defendant knew that the cost of labor subsequent to the 31st day of March, 1942, would be increased, and based on the increased cost of labor and for no other reason whatsoever, the defendant put into effect [7] or promulgated prices of certain commodities manufactured and sold by it; that defendant, in fixing said prices, was forced or compelled to so adjust its prices to avoid the conse-

quences of selling such commodities for prices less than the actual cost of production; that such consequence was due entirely to circumstances beyond the control of the defendant and was based upon facts and circumstances known to plaintiff and his principal, the United States Government, and if any of the items referred to in plaintiff's complaint fall without the technical comprehension of price regulations attempted to be promulgated by the plaintiff, the same were due entirely to facts and circumstances countenanced and approved by plaintiff's principal, the United States Government.

SECOND AFFIRMATIVE ANSWER

I.

That on or about November 10, 1943, immediately following the issuance or promulgation of the new or amended price regulation numbered 244 and dated October 21, 1942 (effective on October 26, 1942,) defendant, through its Secretary-Treasurer, D. B. Card, conferred with the Chief Enforcement Attorney of the Office of Price Administration at Portland, Oregon, in regard to preparing and filing a protest in respect to such price regulations and the interpretation thereof by the Portland office in respect to commodities sold to Willamette Iron and Steel Corporation, Tuerck-Mackenzie Co., and Bingham Pump Co., and others, and at that time the said Chief Enforcement Attorney advised defendant, through said Secretary-Treasurer, that any protest or application for adjustment would be unavailing and ineffective unless accompanied by a tender

of the amounts of money to the Office of Price Administration, which said office at that time claimed were due and owing by the defendant for overcharges on commodities theretofore sold to Tuerck-Mackenzie Co., and Bingham Pump Co., for times subsequent to the original effective date of the maximum price schedule.

II.

That at the time referred to in the preceding paragraph the Office of Price Administration was claiming that defendant had made overcharges to aforesaid Tuerck-Mackenzie Co., and Bingham Pump Co., for commodities sold to said respective firms, and, on the other hand, the defendant was disclaiming that it had charged said companies in excess of the amount fixed by the maximum price schedule and therefore would not pay such amounts; that defendant would have at that time filed a protest against the new price schedule (effective as of Octo- [8] ber 26, 1942) in regard to gray iron castings on the ground that said prices were below the cost of production (taking into account labor and material as of that time), and defendant was prevented or induced not to file such protest because only of the advice or information of the Chief Enforcement Attorney to the effect that such protest would be unavailing, ineffective and would be given no effect by the plaintiff except only if accompanied by the aforesaid amounts which the plaintiff claimed were due and which the defendant disputed.

III.

That defendant, in good faith, accepted aforesaid advice or information from said Chief Enforcement Attorney as and for a ruling of the Office of Price Administration and made no attempt to file a protest or application for adjustment of the prices charged to said companies; that defendant relied entirely upon the representations of said Chief Enforcement Attorney and was induced thereby to act as it did in not filing a protest or application for price adjustment and the plaintiff should be and is estopped from making any claim against the defendant on account of alleged violations of regulations as to maximum prices subsequent to the date of said advice, to-wit: On or about the 10th day of November, 1942.

IV.

That if it should be found that defendant charged in excess of the prices fixed by regulation 244, said were within the amounts fixed in the protest defendant would have filed had it not been for the advice of the Chief Enforcement Attorney **aforesaid, and** as fixed in the protest defendant subsequently did file, to-wit: On the 10th day of February, 1943.

V.

That the regulations of the Office of Price Administration upon which the second and third cause of action of plaintiff's complaint is based provides, among other things, as follows:

“Any person may offer or agree to adjust or fix prices to or at prices not in excess of the

maximum prices in effect at the time of delivery. Where a petition or application for amendment or for adjustment or for exception under Sec. 1421-157 has been duly filed, a seller may make sales, deliveries or offers of sale at prices adjustable in accordance with the disposition of such petition or application and shall refund to the purchaser any moneys or other consideration paid which are in excess of the maximum price." [9]

That the aforesaid regulation was of the same force and effect as the part of regulation number 244 relating to maximum prices.

THIRD AFFIRMATIVE ANSWER

I.

Defendant alleges that the individuals subscribing their names as attorneys for plaintiff in this action instituted said action of their own volition or at the instance of the Portland, Oregon, office of the Office of Price Administration and without the named plaintiff theretofore having directed the institution of said action in his behalf and without said plaintiff having delegated to said attorneys or the Portland, Oregon, office of the Office of Price Administration authority to institute such action, and this action was instituted and is being prosecuted without authority of the plaintiff.

FOURTH AFFIRMATIVE ANSWER

I.

That sales made by the defendant subsequent to the effective date of the maximum price regulation No. 244 to the purchasers, referred to in Paragraph VI (Second Cause of Action), namely: Tuerck-Mackenzie Co., Willamette Iron & Steel Corporations and Bingham Pump Company, were effected through an agreement with such purchasers that the commodities represented in each sale would be invoiced to such purchasers at prices which defendant claimed it was entitled to charge under said regulation 244; however, it was understood and agreed between the defendant and such purchasers that such purchasers would retain and not pay to the defendant that amount of each invoice aggregating the excess over the price which plaintiff claimed, and does now claim, was applicable to the commodities represented by such invoice, pending the final determination by plaintiff and defendant of the price applicable, and said excess has not as yet been collected by the defendant or paid to the defendant by said respective purchasers, and defendant's action in fixing said price was not a wilful violation of or disregard of said price regulation, nor was said price the result of defendant's failure to take practicable precautions against a violation. [10]

FIFTH AFFIRMATIVE ANSWER

I.

That all castings manufactured by defendant were for sale to purchasers located in the same area

and were in substantially the same quantities and of the same grades, and the conditions of the sale were the same; that they were of the same general design, specifications and weight and produced by the same type of pattern equipment, and therefore said purchasers belong to the same general class; that after the promulgation of the general maximum price regulation, defendant, acting in good faith, was attempting to determine the applicability of the maximum prices fixed by said regulation as the same related to the various purchasers of the defendant during the time upon which the price schedule was based; that during said period defendant's officers conferred with representatives of the Portland office of the Office of Price Administration for the purpose of informing themselves as to the applicability of said price; that all prices fixed for castings sold as referred to in plaintiff's complaint were fixed by defendant's officers in good faith and with full intention of complying with all the maximum price regulations and in the belief that the prices so fixed did so comply, and defendant now believes that all prices to all purchasers referred to in plaintiff's complaint were within such regulations.

Wherefore, defendant, having answered plaintiff's complaint, prays that plaintiff's complaint be dismissed and for such other relief as the court may deem proper.

/s/ BARRETT RANDALL

/s/ WILBER HENDERSON

Attorneys for Defendant.

Due and timely service of the foregoing, and the receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 27th day of September, 1944.

/s/ F. E. WAGNER,

Of Attorneys for Plaintiff.

[Endorsed]: Filed September 27, 1944. [11]

[Title of District Court and Cause.]

MOTION

Comes the plaintiff in the above entitled action and moves the Court for an order striking from defendants' Second Amended Answer all of the allegations contained in defendant's FIRST, SECOND, THIRD, FOURTH and FIFTH affirmative answers and defenses.

F. E. WAGNER,

Of Attorneys for Plaintiff.

State of Oregon,

County of Multnomah—ss.

Due Service of the foregoing Motion is hereby accepted in Multnomah County, Oregon this 4th day of December, 1944.

/s/ WILBER HENDERSON,

Of Attorneys for Defendants.

[Endorsed]: Filed December 4, 1944. [12]

[Title of District Court and Cause.]

ORDER OF SUBSTITUTION

This matter came on to be heard upon the application of Chester Bowles, acting by and through his counsel, for an order substituting said Chester Bowles as plaintiff in the above-entitled cause in place and in lieu of Prentiss M. Brown, and the Court being fully advised in the premises, it is

Hereby Ordered that Chester Bowles be and he is hereby substituted as plaintiff in the above-entitled cause in the place and in lieu of Prentiss M. Brown.

Dated this 20th day of December, 1943.

/s/ CLAUDE McCOLLOCH,

United States District Judge.

Approved December 13, 1943,

WIDBER HENDERSON,

Of Attorneys for Defendant.

December 12, 1944.

[Endorsed]: Filed December 20, 1943. [13]

[Title of District Court and Cause.]

ORDER

December 12, 1944

Plaintiff appearing by Mr. F. E. Wagner and Mr. Adams F. Joy, of counsel, defendant by Mr. Wilbur Henderson and Mr. Barrett Randall, of counsel. Whereupon this cause comes on to be tried before

the Court upon the pleadings and the proofs without the intervention of a jury, and the Court having heard the evidence adduced,

It is ordered that plaintiff's motion to amend its complaint herein be, and the same is hereby allowed, and that the bill of particulars on file herein be, and the same is hereby amended by interlineation.

Thereafter this cause comes on to be heard by the Court upon the motion of the defendant for an order of dismissal herein, and the Court having heard the statements of counsel, will advise thereof. Whereupon,

It is further ordered that the first cause of action herein be and the same is hereby dismissed. [14]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above cause came on for trial on the 12th day of December, 1944, before the Honorable Claude McCulloch, Judge of the above entitled Court, plaintiff appearing by F. E. Wagner, of his attorneys and defendant appearing by Wilber Henderson and Barrett Randall, of its attorneys, and witnesses having been sworn and testified and evidence having been adduced, all submitted to the Court without a jury, the Court now makes the following

FINDINGS OF FACT

I.

During all times mentioned in plaintiff's complaint, defendant was and still is a corporation existing and by virtue of the laws of the State of Oregon, and said corporation having its principal office and place of business in the City of Portland, County of Multnomah, and State of Oregon.

II.

During said times plaintiff's predecessor was and plaintiff was and now is the duly appointed, qualified and acting Price Administrator of the Office of Price Administration of the United States of America.

III.

Defendant was now is a foundry company engaged in the business of founding and selling gray iron castings.

IV.

That during the period August 1, 1942 to October 26, 1942, plaintiff's sales of castings were governed by the General Maximum Price Regulation, said [15] regulation having theretofore been promulgated pursuant to the provisions of the Emergency Price Control Act of 1942. During said period defendant sold and delivered gray iron castings to the Tuerck-MacKenzie Company, Bingham Pump Company, Willamette Iron and Steel Corporation, and Iron Fireman Manufacturing Company, all of Portland, Oregon.

V.

Defendant's maximum prices for said sales pursuant to the provisions of the General Maximum Price Regulation were the highest prices charged for the same or similar casting sold and delivered during the month of March, 1942 to a purchaser of the same class.

VI.

The court finds that defendant sold similar castings to the Marine Electric Company of Portland, Oregon, during the month of March 1942, that the said Marine Electric Company was a purchaser and of the same class as the Tuerck-MacKenzie Company, Bingham Pump Company, Willamette Iron and Steel Corporation, and Iron Fireman Manufacturing Company, and that the prices charged said Tuerck-MacKenzie Company, Bingham Pump Company, Willamette Iron and Steel Corporation during the period August 1, 1942, to October 26, 1942, did not exceed the highest prices charged to the said Marine Electric Company during the month of March, 1942.

VII.

That during the period of time October 26, 1942, to and including March 10, 1943, sales and deliveries of said gray iron castings by said defendant corporation to said purchasers were governed by the provisions of Maximum Price Regulation 244. By virtue of the provisions of said Maximum Price Regulation 244, defendant was entitled to charge and receive for each casting the highest net price

at which it delivered substantially the same casting to the particular purchaser during the period August 1, 1941, to February 1, 1942.

VIII.

The court finds that on or about the 13th day of April, 1942, defendant increased its price schedule to Tuerck-MacKenzie and Bingham Pump Company to prices above those theretofore charged said respective purchasers [16] for similar castings; that in the early part of November 1942 defendant entered into an arrangement with the aforesaid respective purchasers to render invoices for castings delivered to them after that time upon the basis of the increased price schedule, but that notwithstanding such invoices it was understood that such purchasers would pay only upon such invoices the amount determined by computation on the original or unrevised price schedule, or on the basis of the prices prevailing before the increase, and that the excess or difference between the amount shown by the invoice and the amount paid would be retained by such purchaser pending the determination of the validity of the increased price schedule; that since the early part of November 1942 the defendant has continued, during the time referred to in plaintiff's complaint, to render to the aforesaid purchaser invoices and to make deliveries and receive payment in pursuance of the foregoing agreement.

IX.

That upon the sales and deliveries of castings by defendant to Tuerck-MacKenzie during the period from October 26, 1942, to March 10, 1943, the amount of the prices at which castings were invoiced over the prices fixed by Maximum Price Regulation 244 amounted to \$1,784.06; that said purchaser withholds in its possession, on account of the arrangement aforesaid, the amount of such excess.

X.

That upon the sales and deliveries of castings by defendant to Bingham Pump Company during the period from October 26, 1942, to March 10, 1943, the amount of the prices at which the castings were invoiced over the prices fixed by the Maximum Price Regulation 244 amounted to \$3,269.38; that said purchaser withholds in its possession, on account of the arrangement aforesaid, the amount of such excess.

XI.

The court finds that on or about the 20th day of October, 1942, the defendant increased its price schedule to Willamette Iron & Steel Corporation to prices above those theretofore charged said purchaser for similar castings, such revision to be retroactive and apply to all sales made to said purchaser [17] subsequent to March 1, 1942; that in the early part of November 1942 defendant entered into an agreement with the aforesaid purchaser to render invoices for castings delivered to it after that time upon the basis of the increased

price schedule, but that notwithstanding such invoices it was understood that such purchasers would pay only upon such invoices the amount determined by computation on the original or unrevised price schedule, or on the basis of the prices prevailing before the increase, and that the excess or difference between the amount shown by the invoice and the amount paid would be retained by the purchaser pending the determination of the validity of the increased price schedule; that since the early part of November 1942 the defendant continued, during the time referred to in plaintiff's complaint, to render to the aforesaid purchaser invoices and to make deliveries and receive payment in pursuance of the foregoing agreement.

XII.

That upon the sales and deliveries of castings by defendant to Willamette Iron & Steel Corporation during the period from October 26, 1942, to March 10, 1943, the amount of the prices at which castings were invoiced over the prices fixed by Maximum Price Regulation 244 amounted to \$3,646.20; that said purchaser withholds in its possession, on account of the arrangement aforesaid, the amount of such excess.

XIII.

The court finds that during the period October 26, 1942, to December 31, 1942, the defendant corporation sold and delivered gray iron castings to the Iron Fireman Manufacturing Company of Portland, Oregon; that the legal maximum prices for

gray iron castings governing said sales were established by said Maximum Price Regulation 244. The court further finds that all sales of said castings were at prices not in excess of the maximum price as established by said regulation for the same castings as sold and delivered during said time to Marine Electric Company of Portland, Oregon.

XIV.

The court finds that defendant corporation sold similar castings to the Marine Electric Company of Portland, Oregon, during the period August 1, 1941, [18] to February 1, 1942; that said Marine Electric Company was a purchaser and of the same class as the Iron Fireman Manufacturing Company, and that in sales of gray iron castings by defendant to the said Iron Fireman Manufacturing Company during the period October 26, 1942, to December 31, 1942, said prices charged did not exceed the prices charged by defendant to Marine Electric Company during said period August 1, 1941, to February 1, 1942.

XV.

The court further finds that during all said times the violations of the above-mentioned price regulation, order or price schedules by said defendant were neither wilful nor the result of failure to take practicable precautions against the occurrence of the violations.

XVI.

The bringing of this action was not authorized by the named plaintiff nor his predecessor, except by the purported blanket delegation of authority, in Futuru, Rev. Gen. Order 3 in evidence, but was brought on the exercise of discretion by the then Chief Enforcement Attorney of the Regional Office in the City of San Francisco, State of California, of the Office of Price Administration, and pursuant to his express direction.

Based upon the foregoing FINDINGS OF FACT, the court makes the following

CONCLUSION OF LAW

I.

That defendant is entitled to a judgment that this action be dismissed.

Dated this 21st day of December, 1944.

CLAUDE McCOLLOCH,

United States District Judge.

Service of foregoing accepted in Portland, Oregon, this 19th day of December, 1944.

F. E. WAGNER,

Of Attorney for Plaintiff.

[Endorsed]: Filed Dec. 21, 1944. [19]

In the District Court of the United States
for the District of Oregon

Civil No. 2124

CHESTER BOWLES, Administrator,
Office of Price Administration,
Plaintiff,

vs.

CRAWFORD AND DOHERTY FOUNDRY
COMPANY, an Oregon corporation,
Defendant.

ORDER OF DISMISSAL

This matter came on to be tried on the 12th day of December, 1944, before the Honorable Claude McColloch, Judge of the above entitled Court, plaintiff appearing by F. E. Wagner, of his attorneys and defendant appearing by Wilber Henderson and Barrett Randall, its attorneys, and witnesses having been sworn and testimony and evidence adduced, and the Court having heretofore made its Findings of Fact and Conclusions of Law.

Now Therefore, it is

Ordered and Adjudged that this action be and the same is hereby dismissed.

Costs to neither party.

Dated this 21st day of December, 1944.

CLAUDE MCCOLLOCH

United States District Judge.

[Endorsed]: Filed Dec. 21, 1944. [20]

[Title of District Court and Cause.]

ORDER TO FORWARD EXHIBITS

It appearing necessary that the original exhibits in the above-described cause, accompany the transcript of record upon appeal to the Circuit Court of Appeals for the Ninth Circuit,

It Is Ordered that the Clerk of this Court forward to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, all of the original exhibits numbered 1 to 35, inclusive, filed in this cause.

Dated at Portland, Oregon This 20th day of March, 1945.

CLAUDE McCOLLOCH

Judge

[Endorsed]: March 20, 1945. [21]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Crawford and Doherty Foundry Company, an Oregon Corporation, defendant above named, and Barrett D. Randall and Wilber Henderson, its attorneys.

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment dismissing said action, made and

entered in the above entitled action on the 21st day of December 1944.

Dated at Portland, Oregon this 24th day of February, 1945.

/s/ F. E. WAGNER

/s/ W. DUNLAP CANNON, Jr.

Attorneys for Appellant

Chester Bowles,

Administrator

[Endorsed]: Filed Feb. 24, 1945. [22]

[Title of District Court and Cause.)

DESIGNATION OF RECORD

Comes now the plaintiff above named, and as appellant in the above-entitled cause submits the following as his Designation of Record on the appeal of said matter to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Complaint
2. Second Amended Answer
3. Plaintiff's Motion to Strike from Defendant's Second Amended Answer, paragraphs I, II, III, IV and V.
4. Order of Substitution of Party Plaintiff
5. Order dismissing First Cause of Action
6. Findings of Fact and Conclusions of Law
7. Judgment Order Dismissing Action
8. Transcript of Pre-trial Conference, December 4, 1944.

9. Transcript of Trial Proceedings, December 12, 13 and 20, 1944.
10. Order to forward all exhibits including Plaintiff's and Defendant's exhibits introduced in evidence, Nos. 1 to 35 inclusive.
11. Notice of Appeal.
12. This Designation of Record.

Dated at Portland, Oregon this 19th day of March, 1945.

/s/ F. E. WAGNER

Of Attorneys for Appellant

[23]

State of Oregon

County of Multnomah—ss.

Due service of the foregoing Designation of Record is hereby accepted in Multnomah County, Oregon, this 20th day of March, 1945, by receiving a copy thereof duly certified to as such by F. E. Wagner, of Attorneys for Plaintiff.

/s/ WILBER HENDERSON

Of Attorneys for Defendant.

[Endorsed]: Filed March 20, 1945. [24]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

United States of America,

District of Oregon—ss:

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon,

do hereby certify that the foregoing pages number 1 to 25 inclusive constitute the transcript of record on appeal from a judgment of said court in a cause therein numbered Civil 2124, in which Chester Bowles, Administrator, Office of Price Administration, is Plaintiff and Appellant, and Crawford and Doherty Foundry Company, and Oregon Corporation, is Defendant and Appellee; that the said transcript has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court; that I have compared the foregoing transcript with the original record thereof, and that it is a full, true and correct transcript of the record and proceedings had in said court and in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of the testimony taken and filed in this office in this cause, together with exhibits 1 to 35 inclusive.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 29th day of March, 1945.

(Seal)

LOWELL MUNDORFF,

Clerk.

By F. L. BUCK

Chief Deputy. [25]

In the District Court of the United States
for the District of Oregon.

Civil No. 2124.

CHESTER BOWLES, Administrator,
Office of Price Administration,
Plaintiff,
vs.

CRAWFORD AND DOHERTY FOUNDRY
COMPANY, an Oregon corporation,
Defendant.

Portland, Oregon, Monday, December 4, 1944.
10:15 o'clock A. M.

Before:

Honorable Claude McColloch, Judge.

Appearances:

Mr. Frank E. Wagner, District Enforcement
Attorney, Portland District, Office of Price
Administratiton, appearing in behalf of the
Plaintiff.

Mr. Wilber Henderson, of Attorneys for the
Defendant.

Alva W. Person, Court Reporter.

PRE-TRIAL PROCEEDINGS

Mr. Henderson: If it please the Court, counsel
for the Administrator informed me before coming
into court they were [1*] filing a motion directed

*Page numbering appearing at top of page of original Reporter's Transcript.

to the answers that had been filed. Probably that should be disposed of first, or should it? We will proceed as your Honor wishes.

The Court: What is the motion about?

Mr. Wagner: It is a repetition, your Honor, of a previous motion that was filed to the original pleading. This is renewing our position to the defenses that are raised in the second amended answer of the defendant.

The Court: I may reserve decision on those,—will either decide them at pre-trial or trial.

Mr. Henderson: If the Court please, at some time when we were before you, I believe your Honor suggested that I might proceed with the trial of this case immediately, without a pre-trial conference, and I stated that I thought a pre-trial conference was necessary, and so I suppose the first thing to do is to justify to the Court that assertion.

There are a lot of causes of suit stated in the complaint. The first had to do with some sale of some scrap iron, which I understood is a matter that the Government is no longer urging. We are concerned only with the second and third causes of suit.

The second cause of suit states that between the 11th day of May, 1942, and the 26th day of October, Crawford and Doherty sold certain gray iron castings, including Meehanite castings, for prices in excess of the Maximum Price fixed as [2] of March, 1942, to Tuerck-MacKenzie, and Bingham Pump Company, and they also in this same cause of suit

allege that between October 26, 1942, and March 11, 1943, they sold to Tuerck-MacKenzie, Willamette Iron & Steel Corporation, Bingham Pump Company, and others, these castings in excess of price fixed by Maximum Price Regulation 244, which was the highest price between October 1st, 1941, and February 1st, 1942.

The third cause of action makes all of these matters part of the same cause of suit and asks for, or alleges that treble amount would equal \$48,477.90.

Now the first answer is directed to the proposition that the prices upon which—I mean, the price schedule was based on prices as between February 1st, 1942, and August 1st, 1941—I have stated these dates backwards—that the wage schedule of Crawford and Doherty, which it then had as foundry workers, expired the 1st day of March and the War Labor Board issued a directive increasing the wages of Crawford and Doherty from 20 to 30 per cent over the amount that was being paid when the price which is used as the basis was fixed. That is, although the Government said that the prices should be as of prior to the 1st day of February, 1942, the War Labor Board said the same labor produced these same castings should be increased from 20 to 30 per cent.

Now, if the Court please, that was the issue in the case before the Emergency Court of Appeals. That has been [3] decided adversely to Crawford and Doherty. I am telling the Court. I am con-

ceding that the Court was right, but they have decided it, and so that is out.

Now the second affirmative answer advances the proposition that during the time immediately subsequent to the 26th day of October, which is the date Regulation 244 went into effect, the office of Crawford and Doherty was in conference with the local enforcement officers and the local enforcement officers told them that they could not file a protest unless they put up all that they claimed was then due.

Now the regulation provided that if this protest was filed they could go ahead and proceed to and did sell at the prices they claimed they were entitled to.

We claim thereafter, and especially against the Government—not against the Government; against the Administrator, because the Enforcement Attorney told us that it would be of no avail to file this protest, because it would be disregarded, because those amounts were due, so it was not filed until a subsequent date. We allege that if it had not been for the action of the local office that would have been done.

Now the third affirmative defense is directed to the proposition that the individuals who subscribed their names as attorneys for the plaintiff and who instituted [4] this action, did so of their own knowledge, and it is not an action by the Administrator himself. This is in line with the motion that was made in the Wheeler case, which was heard by

your Honor, and it is intended to raise the same point.

Now the fourth affirmative answer is to the effect that during part of this period of time for which they are asking this money Crawford and Doherty has not collected the money. Crawford and Doherty has only collected the price that the Government said they were entitled to collect, and Willamette Iron & Steel, Tuerck-MacKenzie, and Bingham Pump Company are withholding the surplus amount. That is, although invoices were rendered at the price that Crawford and Doherty claimed, there was an understanding with these people, these customers, Tuerck-MacKenzie, Bingham Pump Company, Willamette Iron & Steel and Iron Fireman, that they would only pay the amount that the Government said was the proper price. So for all that amount it is our contention that, of course, there is not a violation of the regulation.

Now a fifth defense, and, if the Court please, this is the one that provokes what I consider made it necessary that a pre-trial conference be had. It is our contention that all of the prices for these people, Tuerck-MacKenzie, Bingham Pump Company, Willamette Iron & Steel, and the Iron Fireman, are at prices that were the same as Crawford and [5] Doherty were during the month of February, even—I don't go as far as March—even back as far as February, 1942, the same prices that Crawford & Doherty were at that time charging to Marine Electric.

So I considered it was necessary to have a pre-trial conference to determine the formula, if there is such a thing—the formula or the method we are to resort to, to determine whether or not these castings that were sold the Marine Electric are, in fact, the same as the castings sold these other people. That is, do they have to be identical in shape, do they have to be identical in weight, to be the same casting or the casting that is contemplated by the regulation, or may Crawford and Doherty rightfully charge for these castings, if they are the same in a general way—may they charge the same price that they charged the Marine Electric?

Now it is our contention that they are, and I was hoping that out of the pre-trial conference we could obtain—incidentally, counsel for the Government and we have conferred several times trying to agree upon a stipulation, stipulating a formula. We could not ultimately agree. We are hoping that out of this pre-trial conference that one thing can be determined, or we want that determined, so when we go to trial we will know what is expected of us in the way of evidence on that particular thing.

The Court: If you haven't been able to agree, what can I [6] do about the matter?

Mr. Henderson: Well, your Honor, I suppose that you are in a position where you have to do something.

The Court: I wouldn't except after trial. I think I can guess what your disagreement is about, and I don't see how to describe it at all, which would reflect the complete theories of the parties.

Mr. Henderson: Well, to illustrate what I mean I said you have to; I suppose that is true—we have to finally leave it to the evidence, but we had suggested to counsel for the Government——

The Court: Everybody knows you can go down here and get your automobile repaired now and you pay \$75 for what you paid \$25 two years ago, and yet if somebody were to claim that, not naming anybody but whoever was doing this work, that they could not charge more than \$25 because on a previous date that is what he charged, he would show you a couple of types of red paint and a few other things that made it different than what he did before. That is just human nature in those things. I suspect something like that presents the difference between you people, as to whether in fact these things were the same as you made for the Marine Electric or the same as you made for other people.

Mr. Henderson: Now to further indicate to your Honor what we had in mind, this is an outline of what we proposed to the [7] Government. That is, are these the things that are to be taken into consideration: Whether the iron castings purchased are comparable shapes, sizes, weights and dimensions? Whether they were manufactured according to pattern furnished by respective parties to manufacturing and grading to common standards——

The Court: What are they?

Mr. Henderson: To common standards. That is, manufactured according to pattern, or really manufactured to keep in stock to supply a particular

demand. That is what I meant by that. Whether or not the patterns were suitable for bench or floor molding, on the one hand, or machine molds, on the other. That is, having to do with the manner in which they were manufactured in the foundry. Whether or not the castings were manufactured on a job basis or on a production basis. Whether or not the use of the castings, that is, whether it was for the installation into or attachment to an instrumentality, device or contrivance for resale or for use by the purchaser in his plan operation, or for resale as a distinct item as manufactured. We are contending all of these things were actually produced for the Marine Electric, and all of them to go into ships or munitions of war by the various parties, by the Marine Electric, the Bingham Pump Company, the Willamette Iron & Steel and the Iron Fireman. Whether or not the castings required——

The Court: You claim that as a ground of similarity? [8]

Mr. Henderson: Yes. I am suggesting that all of these castings had these things in common, if that is what is determined.

The Court: Yes.

Mr. Henderson: That is, I am now suggesting to your Honor what all these castings manufactured by Crawford and Doherty in these various instances have in common.

The Court: Yes.

Mr. Henderson: And it is our contention that these common attributes or characteristics make

them fall within the classification fixed by the price regulation.

The Court: Mr. Wagner gets up and will probably tell me wherein they were different, I suspect.

Mr. Henderson: Yes. I apprehend that will be his position, but these are the things that we are suggesting should be taken into consideration. Next, whether the finishing or processing required by the purchaser of the item purchased; that is, did Crawford and Doherty finish it or did the purchaser finish it?

Similarity of process, manner of delivery, location of purchaser in respect to plant, credit arrangement, and so forth.

Similarity of type of iron used.

Now you can get the idea that they somewhere or other should be determined in the pre-trial conference, if it is possible. [9]

The Court: Now Mr. Wagner.

Mr. Wagner: Now, if the Court please the situation that we are at issue upon, which Mr. Henderson has been discussing here, to me is just only a fact, and it emanates from the provision of the regulation, Regulation 244, also General Maximum Regulation, which is involved here, which requires——

The Court: And your number of the General Maximum Price Regulation?

Mr. Wagner: Oh, the General Maximum Price Regulation is effective May 11th, 1942. I don't have the Federal Register No. of them, but Maximum Price Regulation 244 was effective October

26th, 1942. Its Federal Register No. is Vol. 7, Page 971. And then there are a number of amendments that follow there. But the provisions of both of the regulations that have to do with this particular question concern the purchaser of the same class. As I understand Mr. Henderson's position, he is asserting that the Crawford and Doherty's customers, all of their prices are to be governed by those which were charged during the various freezing periods by Crawford and Doherty to the Marine Electric Company. Our position is that on the four customers that were involved in this particular action, namely, Tuerck-MacKenzie Company, and Bingham Pump Company, and Willamette Iron & Steel Corporation, and the Iron Fireman Manufacturing Company, that the first two stated purchasers of the same class, that the [10] other two also are purchasers of the same class but still a different class.

Now just what is a purchaser, or what are the items or facts that go to make up or determine whether or not a purchaser falls into one class or another, seems to me involves a number of other things than just looking to the particular casting or to the fact that the same or similar metal might be used in a casting. I think any classification of a purchaser that we have to look to their dollar volumes, any discounts that might be granted, credit items, and the average poundage that is sold to the particular purchaser.

I think, as does Mr. Henderson, that the size

and the shape of the casting has something to do with it. There is a matter that seems to me very important. That is the location of the purchaser. That is, whether he is—whether deliveries can readily be made, whether he is accessible to the facilities of a seller. Then of course to me the most important thing to determine whether or not a purchaser falls within the same class is the price that was charged. I think that is probably the most important item to consider.

Now, as I say, I don't agree with Mr. Henderson's idea of the formula or the rule which he seeks to establish, but I do feel that the whole question is one of fact and Mr. Henderson has, of course, the privilege of putting on any testimony, any evidence in support of his contention, [11] and of course we have that privilege, too, and it is then up to the Court to determine, as a matter of fact, whether or not the prices are to be governed by those charged to the Marine Electric Company, or to be governed by the previous charges to these same purchasers here.

The Court: Well, how is your case going to shape up? You will have the opening. How will you shape your case up?

Mr. Wagner: Well, we are basing our prices on all of the transactions that Crawford and Doherty Company had during their business periods with these particular purchasers, with each one, with each purchaser itself. For example, during March of 1942 Crawford and Doherty Company charged Tuerck-MacKenzie Company certain prices for cer-

tain castings, and we have a record of those charges on a per-pound basis. Then May 11th, 1942, the General Maximum Price Regulation was issued, which froze prices as of March of that year. In June, or April, April 13th, Crawford and Doherty Company issued a statement in writing to purchasers, indicating that effective April 14th their prices would be a certain amount higher. On August 1st, which was the first date upon which this type of action could be prosecuted under the Price Control Act Crawford and Doherty were still making those increased charges.

Thereafter, and in October, 1942, the Price Regula- [12] tion 244 was issued, which was constructed to roll prices back to a period in 1941, between August 1st, 1941, and February 1st of 1942, where the seller could establish his ceiling prices by taking the highest sale that he made to a purchaser of the same class, and that is the basis of our suit. That is, part of it is based upon transactions covered by the General Maximum Price Regulation, then the remainder being covered by the Price Regulation 244.

Now we have all of the records that are necessary to establish those base period charges. We also have records that are necessary to indicate the volume of business at the increased prices that Crawford and Doherty had done in each case.

Now I don't know whether there is any disagreement as to the bill of particulars, or what the bill of particulars sets forth here. If there is we would

like at this time to introduce our exhibits are pre-trial exhibits.

The Court: Well, Gentlemen, there is lots about this case that I don't understand at this stage, and may never understand, and I would like to make sure that each of you before you go out understand the opposition's theory. You understand how he is going to open on you?

Mr. Henderson: Yes, your Honor.

The Court: What he bases his claim on?

Mr. Henderson: That is one of the things that I would [13] like to know. Is he going to close his proposition on the assumption that, we will say, the price which controls is the price of a particular seller, or is he going to have to meet the issue that we don't sell to anyone else at another price? That is, what is his position? Is the Government's position this: That if you sold to Tuerck-MacKenzie, we will say, a box that is oblong in shape, that would not be a sample or could not be used or availed of by us if we sold to the Willamette Iron & Steel a box that was square in shape, yet making up the same amount or taking up the same amount of metal from the same material, sold on the same price plan and delivered within the same area?

Now if the Government means that, that they have to be the exact item, I would like to know, and I would like to know if we are expected to take the burden of showing that at that time we sold to somebody else at a different price, or must they initially show that our price schedule for

these particular things, to whomsoever we sold, was changed?

Do I make myself clear there? That is, is he claiming that all he has to establish is that we changed the prices of the particular company, or is he going to take the burden, or is the Government going to take the burden of showing that as to any of these people they sold to the prices were greater than the prices had been for the Marine Electric? [14]

Mr. Wagner: Well, our position, Mr Henderson, is that the Marine Electric Company prices during March of 1943, or during the other freezing period, August of 1941 to February 1st of 1942, does not govern the prices for the four purchasers that are involved and set forth in the complaint. That is, the Marine Electric in our position is a very small purchaser. They are purchasing items that are not at all comparable to the castings that are involved here, and, therefore, those prices cannot govern the prices for castings which were sold to Tuerek-MacKenzie, or Bingham Pump, nor can those prices govern the castings which Crawford and Doherty sold to Willamette Iron & Steel and the Iron Fireman Company. Those are entirely different types of castings, and they are entirely different types of purchasers. That is our position. It would seem to me that if you wish to decide that the Marine Electric Company—that their freezing date prices are the governing ones, you certainly have that privilege, but then it comes down to this question of fact we are discussing: As to what is the customs of the same class,

whether or not these prices govern or whether these particular prices govern that were taken from the previous records of Crawford and Doherty to the same buyers.

The Court: To the same buyers?

Mr. Wagner: Yes, with the exception of Iron Fireman Manufacturing Company. They had no purchases during the freeze [15] periods, but we contend that the prices at which Willamette Iron & Steel Corporation were sold castings governs there, because of the identical size, and especially of a casting which was for Liberty Ship motors.

The Court: I don't know how your pleadings are going to break down, but let me ask, now, you are claiming an overcharge in sales to Tuerck-MacKenzie? That is one of your claims, isn't it?

Mr. Wagner: Yes.

The Court: Now then, to prove that charge are you going to show an earlier sale during the freeze period to Tuerck-MacKenzie at a lesser amount? Is that the way your case is going in?

Mr. Wagner: Well, we are going to start——

The Court: You are going to put Tuerck-MacKenzie against Tuerck-MacKenzie, and Willamette against Willamette? Is that the way you expect to do?

Mr. Wagner: No. We are putting Tuerck-MacKenzie against—their freeze period prices against Tuerck-MacKenzie's subsequently raised prices.

The Court: All right. And Willamette against Willamette?

Mr. Wagner: That is right; and Bingham Pump against Bingham Pump.

The Court: And that is the way it is going to be as to everyone? [16]

Mr. Wagner: Yes.

The Court: And in that case you are going to claim sales against Willamette?

Mr. Wagner: Yes, that is right.

The Court: How does that please you?

Mr. Henderson: Well, your Honor, it finally gets to this: The law says, or the regulation says, "The highest price charged by the seller during such month for the same commodity or service." What I am trying to find out from the counsel, is he distinguishing the service entirely by the fact that it was sold to that particular person? That is, I can give a fair illustration: Supposing that Tuerck- MacKenzie had bought an oblong box and the same amount of material, the same kind of material went into one that was square to one of these other people, yet they had different prices at different times, which one can we avail ourselves of? This says, "The highest price charged by the seller during such month for the same commodity or service." That is the General Maximum Price Regulation. Then 244 says: "Castings substantially the same as those which the seller sold or offered for sale at any time during the period and from August 1st, 1941, to February 1, 1942." It does not say anything about, sold to the same person; it says castings substantially the same. What I had hoped to determine is, what is the Court going to require

them to do to prove that, to negative the [17] idea that we didn't sell to someone else at a similar price.

The Court: I am not going to require them to do anything until it comes to deciding the case. I am just going to sit here and hear both sides. Can you help him out in understanding your theory better than he has?

Mr. Henderson: Let me clear up one thing, as far as invoices. As far as that bill of particulars is concerned we will admit that that is a correct statement of the items as reflected by the books of Crawford and Doherty, if that is what you mean.

Mr. Wagner: Well, I assume, then, that that would dispense with, or dispose of, a lot of documentary transcriptions that we have.

The Court: It sounds like it. How about that? Can you help him?

Mr. Wagner: There are some other things we would like to introduce, if the Court would like to have the exhibits go in. Now or at the time of trial is immaterial to us.

The Court: It won't matter, except I want him to be sure to know what you are going to put in. Do you have something there he doesn't know about? You have been talking about stipulations there. Do you have some you haven't told him about before?

Mr. Wagner: No, I have nothing further. I am sure we have discussed everything from time to time [18]

The Court: Did you hear his last question?

Mr. Wagner: I didn't understand it.

The Court: What?

Mr. Wagner: I didn't understand him. I would like to have him repeat that again, if I can help him.

The Court: Well, you read it, Mr. Person.

(The Reporter thereupon read the statement by Mr. Henderson, beginning, "Well then, it finally gets to this," and concluding, "to someone else at a similar price.")

The Court: That is far enough. The point of regulation says one place the same commodity and at another place it says "substantially the same commodity."

Mr. Wagner: Yes.

The Court: I can't see why he has to be confined to a sale to the same person—why he can't show a sale of the same or substantially the same commodity to another person, at or during the price freezing period.

Mr. Wagner: Well, the during the period of regulation that we believe involved here, it reads as follows:

"The maximum price for each such casting shall be the highest net price (after adjustment for all applicable customary charges, discounts, quantity differential and other allowances in effect for the seller between August 1st, 1941, and February 1st, 1942, inclusive) at which the seller sold [19] or offered for sale such casting to a purchaser of the same class during the period August 1st, 1941, to February 1st, 1942, inclusive."

Now the class of purchaser is involved.

The Court: You say Marine Electric is not of the same class?

Mr. Wagner: That is right, just as much as substantially the same castings.

Mr. Henderson: He didn't answer the question. Is he going to assume that burden at the trial and negative the idea this same casting was not sold to someone else at a different price? That is, how can he complete his case without negating the idea it was sold to somebody else at a higher price? I am trying to find out the way in which we can meet this question.

Mr. Wagner: I believe that our evidence will disclose that these four purchasers are the primary purchasers or customers of Crawford and Doherty Foundry Company, or were during the period of time; that as to those particular classes of purchasers their prices would be governed accordingly by the base period charges, their previous charges. Now whether or not that would seem to negative or exclude Marine Electric, or whether or not you wish to insert or assert that Marine Electric prices would control is just a matter of procedure—a matter of affirmative definition, I suppose, or general [20] denial.

The Court: All right, Gentlemen. When shall be try the case? the sooner the better.

Mr. Henderson: Is the Government going to file a reply?

Mr. Wagner: No. I think our motion to strike will suffice.

The Court: When do we try the case ?

Mr. Wagner: We are ready at any time, your Honor.

The Court: Mr. Henderson?

Mr. Henderson: If the Court please, until I am apprised about it I don't know. It is hard to come into Court. It is hard to find out. This last answer has not answered any question.

The Court: I guess I will have to set the trial date.

Mr. Henderson: Well, I am agreeable to practically any time. I think I have a case set for the 15th of December.

The Court: Well, we will try this case in one day, or less, won't we?

Mr. Henderson: I don't know.

The Court: Let's try to try it on—you have a case here, or your office does, on Monday. Let's try to try it on Tuesday, the 12th.

Mr. Wagner: The 12th?

The Court: All right.

(Thereupon the pre-trial procedure was concluded.) [21]

[Title of District Court and Cause.]

REPORTER'S CERTIFICATE

I, Alva W. Person, certify that the pre-trial procedure in the case of Chester Bowles, Administrator, Office of Price Administration, plaintiff, vs. Crawford and Doherty Foundry Company, an Ore-

gon corporation, defendant, Civil No. 2124, was held on Monday, December 4, 1944, before the Honorable Claude McColloch, Judge; that I reported all of said procedure, and the foregoing twenty-one pages, numbered 1 to 21, both inclusive, contain a full, true and impartial record of said proceedings.

Dated at Portland, Oregon, this 10th day of March, A. D. 1945.

ALVA W. PERSON

Court Reporter

[Endorsed]: Filed March 17, 1945.

[Title of District Court and Cause.]

Portland, Oregon, Tuesday, December 12, 1944.

10:00 o'clock A. M.

Before:

Honorable Claude McColloch, Judge.

Appearances:

Mr. Franz E. Wagner, District Enforcement Attorney, Portland District, Office of Price Administration, appearing in behalf of the Plaintiff.

Messrs. Wilber Henderson and Barrett D. Randall, of Attorneys for the Defendant.

TRIAL PROCEEDINGS

The Court: You may proceed, Mr. Wagner.

Mr. Wagner: If the Court please, in the bill of

particulars which is filed in this case a number of errors occurred in [1] computations and they have been known by both of the parties to this matter for some time, and at this time we would like to make the necessary corrections. On page 5, at the top of the page is a total overcharge figure.

The Court: You will need to make these alterations. You will have to follow them (the Court addressing the Clerk).

Mr. Wagner: The figure \$3,007.98 as corrected should be \$1535.16.

On page 10 the total, \$1,069.41, as corrected should read \$1,060.07.

On page 18 the right-hand column about the middle of the page, the figure \$2,038.73 as corrected should read \$2,036.23.

And on page 23 of the bill of particulars about the middle of the page, the figure \$1954.80 as corrected should read \$1953.56.

On page 25, the right-hand column, the total figure of \$1320.34 as corrected should read \$1315.82.

On page 26 is a recapitulation which carries the figures as uncorrected. The figures as corrected should read \$1535.16, the first figure. As corrected the second one should read \$1060.07. The third figure stands as uncorrected. The fourth figure, \$2,038.73, as corrected should read \$2,036.23. The next figure, \$1954.80, should read \$1953.56, I guess it is. And the next figure, \$1320.34, should read \$1315.62. The total of all of those figures as corrected should read [2] \$15,444.55.

We would like also, your Honor, to amend paragraph V of plaintiff's third cause of action in the complaint so as to read, in line 16, in lieu of the figure \$48,477.09, as corrected should read \$46,333.65.

Mr. Henderson: Will you repeat that, please?

Mr. Wagner: \$46,333.65.

In the prayer of the complaint, page 5, line 9, the same correction.

If the Court please, there are three causes of action in the complaint, the first being allegations laying a foundation for an injunction against the defendant for purchasing scrap steel under Price Regulation No. 4. We are at this time offering to dismiss as to the first cause of action. This, it might be noted, was a counterpart of the all scrap steel case.

The second cause of action is plaintiff's foundation for an injunction in connection with sales of gray iron castings, and the third cause of action is the action for the multiple damages on the overcharges.

Now, your Honor, the matter is at issue on the second amended answer of the defendant, which substantially denies all the material allegations of plaintiff's complaint and sets up five affirmative defenses. To these affirmative defenses the plaintiff has filed a motion to strike all of [3] them.

There has, as yet, been no pre-trial order entered in the matter. There is a large number of exhibits which plaintiff desires to introduce. If it is neces-

sary for us to dispose of any of the questions at this time we are prepared to do so.

The Court: I will reserve ruling on all legal questions. You can put in your exhibits in the usual way as you try the case.

Mr. Wagner: Very well, your Honor. Thank you. Call Mr. Glen Fox.

PLAINTIFF'S EVIDENCE

GLEN FOX

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wagner:

Q. Where are you employed, Mr. Fox?

A. In the Office of Price Administration.

Q. And where? A. Portland.

Q. And how long have you been so employed?

A. Two years and a half. [4]

Q. For two years and a half? A. Yes.

Q. What is your present capacity, Mr. Fox?

A. At the present time I am Shoe Rationing Director.

Q. And outside of your present employment, what was your capacity?

A. At the beginning?

Q. Yes. A. Investigator.

Q. How long were you an investigator, Mr. Fox?

A. A year and a half.

(Testimony of Glen Fox.)

Q. Up until about a year ago you were continuously employed in the Portland District Office as an investigator?

A. That is true.

Q. In your capacity as an investigator did you have occasion to make an investigation of sales by the Crawford and Doherty Foundry Company?

A. Yes, sir.

Q. Are you acquainted with Mr. Card of that concern?

A. I am.

Q. Also Mr. Stirnweis?

A. I have met Mr. Stirnweis.

Mr. Wagner: Have this marked for identification.

(The statement headed "Prices effective before April 13, 1942," and signed Tuerck MacKenzie Co., [5] by William J. MacKenzie, Sec. Treas., so offered, was marked Plaintiff's Exhibit 1 for identification.)

Q. Handing you Plaintiff's Exhibit 1 for identification, Mr. Fox, will you identify that document, please. Describe what it is.

A. This is a list of prices. It is the base prices on castings from Crawford Doherty Company to the Tuerck MacKenzie Company.

Q. Who are the Tuerck MacKenzie Company, Mr. Fox?

A. They are builders of cement pipe making machines.

Q. Customers of Crawford & Doherty Company?

(Testimony of Glen Fox.)

A. They are customers of Crawford & Doherty Company.

Q. And how did you come into possession of that document?

A. I got it from the Tuerck MacKenzie Company. Mr. MacKenzie, the president, gave it to me.

Q. And what prices do you say that document indicates?

Mr. Henderson: Just a minute. If the Court please, the document obviously speaks for itself.

Mr. Wagner: Very well. I will withdraw the question.

The Court: That is all right. Take it down and let Mr. Henderson look it over. Then you can ask any questions about it you want to.

Mr. Wagner: We will offer the document.

The Court: Well, I want to know what it says.

[6]

Mr. Wagner: I beg pardon?

The Court: I want to know what it says. After he has seen it let him tell what it says.

Mr. Wagner: Yes. I might add at this time, your Honor, that Mr. MacKenzie, also Mr. Amos, Mr. Bates, and others, involving officers of the concerns which are customers of Crawford & Doherty, will be here this afternoon. If there is any further identification of these documents that is necessary they will be here to take care of that.

The Court: Go ahead and have him tell what it is.

The Witness: Well, these are the prices that were in effect—

(Testimony of Glen Fox.)

Mr. Henderson: If the Court please, he is not answering the question. That document speaks for itself.

The Court: I don't care whether it does or not. I want him to tell what he thinks or claims it is. Go ahead now.

The Witness: These are the prices——

The Court: Give some dates.

The Witness: Prices effective before April——

The Court: Effective by whom?

The Witness: Pardon?

The Court: What do you mean by "effective?"

The Witness: These are the prices that Crawford & Doherty charged Tuerck MacKenzie before April 13, 1942.

The Court: On what? [7]

The Witness: On Meehanite castings and different other castings that the Tuerck MacKenzie Company were buying from Crawford and Doherty.

The Court: All right. Now why do you say those prices were effective before that date? What do you base that on?

The Witness: I base it on the statement by Mr. MacKenzie.

The Court: That is upon MacKenzie's statement to you?

The Witness: And he signed this particular document.

The Court: Well, you had better prove that by MacKenzie when he gets here.

(Testimony of Glen Fox.)

Mr. Wagner: Very well.

The Court: Lay it aside for the present. No Give it back to Mr. Wagner.

Mr. Wagner: Have this document marked for identification, and hand it to the witness, please.

(The statement dated Sept. 29, 1942, signed "Tuereck MacKenzie Company, William J. MacKenzie, Sec. Treas.," so offered, was marked Plaintiff's Exhibit 2 for identification.)

Q. I ask you to describe what that document is and how it came into your possession.

A. It is a statement by Mr. William J. MacKenzie, of the Tuereck MacKenzie Company, and it outlines castings that come under the General "E" Meehanite classification, the [8] castings that the Tuereck MacKenzie Company were purchasing from Crawford & Doherty.

The Court: What date?

Mr. Wagner: Q. During what period of time?

A. This was dated April 13, 1942, and was merely to show the type of castings that came under the General "E" Meehanite classification.

Mr. Henderson: May it please the Court, I do not want to be taking up time; in view of your Honor's ruling on that there, that you wanted to hear about it, I didn't object, but if he is going to explain something other than——

The Court: Well, Mr. Henderson, I will take care of all of that. I just want to get this thing started.

(Testimony of Glen Fox.)

Mr. Henderson: Thanks.

The Court: Now that is a different paper than the one you just had? A. Yes, sir.

The Court: What is the number of the one he first had, Mr. Wagner, your 1?

Mr. Wagner: Yes; Plaintiff's Exhibit 1 for identification.

The Court: And this is Plaintiff's Exhibit 2 you are speaking from now? A. Yes, sir.

The Court: And that is a statement that Mr. MacKenzie gave you at the same time he gave you Plaintiff's Exhibit 1, is it, [9] or about the same time? A. About the same time, yes, sir.

The Court: And it has to do with the kind of castings rather than the prices?

A. That is right.

The Court: All right. Lay it aside.

Mr. Wagner: Q. Now Mr. Fox, did you make any request of Crawford & Doherty to verify or substantiate the prices that they were charging to Tuerck MacKenzie Company for their castings?

A. Yes, sir.

Mr. Wagner: Have that marked for identification.

(The copy of letter dated April 13, 1942, Crawford & Doherty Foundry Co. by V. O. Stirnweis, pres., to Tuerck MacKenzie Company, so offered, was marked Plaintiff's Exhibit 3 for identification.)

Q. Handing you Plaintiff's Exhibit 3, Mr. Fox,

(Testimony of Glen Fox.)

will you identify that and explain how it came into your possession.

A. This is a copy of a letter written from the Crawford & Doherty Company on April 13, 1942, to Tuerck MacKenzie, advising them that all previously quoted prices had been canceled and that the list prices quoted here—the prices quoted in this letter, would be effective as of April 13.

Q. Did you make a request from the Crawford & Doherty Foundry Company for that document there? [10]

A. I don't recall whether they gave it to me or whether this was a copy made from the files of Tuerck MacKenzie. I believe Mr. Card gave me a copy of it but I am not certain.

Q. This came into your possession then about the same time that Plaintiff's Exhibits 1 and 2 did?

A. Yes.

The Court: You may put that in, if you want to put it in. That may go in now.

Mr. Wagner: Very well.

The Court: You want to offer it?

Mr. Wagner: Yes.

The Court: It is admitted as Exhibit 3.

(The copy of letter so offered and received, having been previously marked for identification, was marked received as Plaintiff's Exhibit 3.)

(Testimony of Glen Fox.)

PLAINTIFF'S EXHIBIT No. 3

Crawford & Doherty Foundry Co.

4604 S.E. Seventeenth Ave.

Portland, Oregon

April 13, 1942

Tuerck MacKenzie Co.

687 N. Thompson St.

Portland, Oregon

Gentlemen:

Effective April 14, 1942 all privously quoted prices on castings are hereby cancelled and the following schedule substituted therefor.

General "E" Meehanite castings .....	.11	per lb.
Cores and all other "B" Meehanite Castings.....	.125	"
Bend Jackets .....	.17	"
Bell End Pallets up to 12" .....	.11	"
Bell End Pallets over 12" .....	.12	"
Culvert Pallets up to 12" .....	.12	"
Culvert Pallets over 12" .....	.13	"
Irrigation Pallets up to 12" .....	.13	"
Irrigation Pallets over 12" .....	.14	"

Castings weighing under one pound each will be billed as one pound castings.

We shall do our utmost to furnish your requirements as in the past and are endeavoring to give you all the service we can under present conditions.

(Testimony of Glen Fox.)

Thanking you for past business and hoping we may serve you in the future, we are,

Very truly yours,

CRAWFORD & DOHERTY
FOUNDRY CO.

By V. O. STIRNWEIS

Pres.

VOS/maa

Mr. Wagner: Mark that, please.

(The copy of letter dated April 24, 1941, Crawford & Doherty Foundry Company by V. O. Stirnweis, Pres., to Tuerck MacKenzie Co., so offered, was marked Plaintiff's Exhibit 4 for identification.)

Q. Handing you Plaintiff's Exhibit 4 for identification, Mr. Fox, will you explain how that came into your possession, and identify the document, please.

A. Well, this is a copy of a letter from Crawford & Doherty to [11] Tuerck MacKenzie on April 24, 1941, which advised them that because of the increased costs——

The Court: What year? A. 1941.

The Court: The year before the other letters?

A. Yes, sir. They were reaching the crisis on their castings.

Mr. Wagner: Very well. We will offer that.

The Court: Admitted.

(Testimony of Glen Fox.)

(The copy of letter so offered and received, having been previously marked for identification, was marked received Plaintiff's Exhibit 4.)

PLAINTIFF'S EXHIBIT No. 4

Crawford & Doherty Foundry Co.

4604 S. E. Seventeenth Ave.

Portland, Oregon

April 24, 1941.

Tuerck MacKenzie Co.

687 N. Thompson St.

Portland, Oregon

Gentlemen:

On account of increased costs which have been accumulating for some time, we are forced to cancel existing price schedules effective immediately, and substitute the following, subject to change without notice.

"B" Mehanite, (cores etc.)	10 $\frac{1}{4}$ c per lb.
Bend jackets	15c per lb.
Other "E" Meehanite castings	9 $\frac{1}{4}$ c per lb.

We shall do our utmost to furnish your requirements as in the past and are endeavoring to give you all the breaks we can under present conditions.

Yours very truly,

CRAWFORD & DOHERTY

FOUNDRY CO.,

By V. O. STIRNWEIS

Pres.

VOS:C

(Testimony of Glen Fox.)

The Court: What is the control date of this case?

Mr. Wagner: Two dates. Covering a portion of it, your Honor, is March of 1942, and then after October 26th, 1943, the base period date was August 1, 1941, to February 1, 1942. That is under Maximum Price Regulation 244.

The Court: March, 1942, and after October, '43?

Mr. Wagner: After October 26, 1943—

The Court: The base date is what, you claim?

Mr. Wagner: August 1, 1941, to February 1, 1942.

The Court: To February 1, '42. I don't understand that.

Mr. Wagner: Well, Maximum Price Regulation 244 attempted to generally roll back prices to a previous—freeze to a [12] previous base period, so that instead of permitting the highest net prices that were charged during March of '42 it rolled them back to the highest net prices that were charged from August, '41, to February 1, 1942.

The Court: And that was done October 26, '43?

Mr. Wagner: That is right.

The Court: And that is Maximum Price Regulation what?

Mr. Wagner: 244.

The Court: What is the earlier one?

Mr. Wagner: General Maximum Price Regulation.

The Court: All right.

(Testimony of Glen Fox.)

Mr. Wagner: Will you mark that, please.

(The copy of letter dated August 21, 1941, Crawford & Doherty Foundry Co. to Tuerck MacKenzie Co., so offered, was marked Plaintiff's Exhibit 5 for identification.)

Q. Handing you Plaintiff's Exhibit 5 for identification, Mr. Fox, I ask you to identify that document and explain how it came into your possession.

A. This is a letter from Crawford and Doherty dated August 21, 1941. It is to Tuerck MacKenzie and it involves an advance in price of certain pallet castings. I believe it is a copy of a letter that Mr. MacKenzie, of Tuerck MacKenzie, gave me.

Mr. Wagner: We will offer it. [13]

The Court: It is admitted.

(The copy of letter so offered and received, having been previously marked for identification, was further marked received as Plaintiff's Exhibit 5.)

PLAINTIFF'S EXHIBIT No. 5

Crawford & Doherty Foundry Co.

4604 S. E. Seventeenth Ave.

Portland, Oregon

Aug. 21, 1941

Tuerck MacKenzie Co.

687 N. Thompson St.

Portland, Oregon

Gentlemen:

Due to conditions beyond our control we find it

(Testimony of Glen Fox.)

necessary to revise prices on pallet castings as follows:

Bell End Pallets up to 12'' .10 lb. over 12'' .11 lb.

Culvert Pallets up to 12'' .11 lb. over 12'' .12 lb.

Irrigation Pallets up to 12'' .12 lb. over 12'' .13 lb.

Thanking you for past business and hoping we may serve you in the future, we are,

Very truly yours,

CRAWFORD & DOHERTY
FOUNDRY CO.

By V. O. STIRNWEIS

Pres.

VOS/maa

Mr. Wagner: Plaintiff's Exhibit 6 for identification.

(The statement dated July 20, 1942, signed William J. MacKenzie, so offered, was marked Plaintiff's Exhibit 6 for identification.)

Q. Mr. Fox, I am handing you Plaintiff's Exhibit 6 for identification and ask you to identify that document and explain how it came into your possession.

A. This is a statement made by William J. MacKenzie, of Tuerck MacKenzie Company.

Q. What date is it?

A. It is dated the 20th day of July, 1942. It is witnessed by John C. Failing.

The Court: What is it about? Just generally.

(Testimony of Glen Fox.)

A. The statement concerns the raise in price of castings from Crawford and Doherty to Tuerck MacKenzie.

The Court: All right.

Mr. Wagner: Q. At what time, Mr. Fox?

A. This is on June 26th.

Q. Of what year?

A. 1942. They billed pallets under 12 inches for 11 cents a pound. [14]

The Court: Well, we don't want the detail. It is just about raising prices.

The Witness: It concerns a raise in prices.

The Court: After June 26th?

A. No. During March—the raise in prices after March, 1942.

The Court: How did Mr. Failing happen to be on it?

A. He was an attorney I believe for the Tuerck MacKenzie Company.

The Court: A raise in prices after what date? Give me that again. A. After March, 1942.

The Court: All right.

The Witness: Subsequent to that.

The Court: All right. Lay that aside until Mr. MacKenzie comes.

Mr. Wagner: Mark that, please.

(The affidavit of William J. MacKenzie dated February 6th, 1943, so offered, was marked Plaintiff's Exhibit 7 for identification.)

(Testimony of Glen Fox.)

Q. Handing you Plaintiffs Exhibit 7 for identification, Mr. Fox, will you describe that document and identify it.

A. This is an affidavit. It is an affidavit by William J. MacKenzie.

The Court: Well, what purpose would an affidavit have in the case? [15]

Mr. Wagner: It was obtained during the course of the investigation, your Honor, and all of these documents together, this being the last one, form the basis of the computation which has been made by Mr. Fox, or under his supervision and direction.

The Court: Well, what is the subject matter of that affidavit?

Mr. Wagner: It covers all of those items that were sold that were not covered by the previous documents here.

The Court: Well, you expect to have Mr. MacKenzie verify it as of that date?

Mr. Wagner: Yes, I will do that.

The Court: And is there a date here that we should write down now that is in this affidavit?

Mr. Wagner: Will you explain that, Mr. Fox.

The Witness: Well, this was sworn to on the 6th day of February, 1943.

Q. What does it cover?

A. It concerns the raise in prices. He sets out what they charged at one time and then goes on to say what they charged after that.

The Court: Well, does it cover the whole period of the complaint? A. Yes, sir.

(Testimony of Glen Fox.)

Mr. Wagner: Yes. [16]

The Court: Tells the whole story of the relation between this company and——

Mr. Wagner: The raise of prices at this particular time.

The Witness: From August 1, 1941, to February 1, 1942, and during the month of March, 1942.

The Court: Does it cover everything that this case covers?

Mr. Wagner: Only as to the sales to Tuerck MacKenzie.

The Court: Yes.

Mr. Wagner: There were three other customers involved.

The Court: I understand.

Mr. Wagner: We will offer this.

The Court: No. We will lay it aside. That won't come in unless Mr. MacKenzie wants to adopt it for his own recollection.

Mr. Wagner: Very well, your Honor.

The Court: Lay it aside. Give it back to Mr. Wagner.

Mr. Wagner: Q. During the course of your investigation after receiving these various documents what was your next step in making this investigation?

A. We transcribed the invoices, the actual invoices that covered shipments from Crawford & Doherty to Tuerck MacKenzie.

Mr. Wagner: Very well. Mark that for identification.

(Testimony of Glen Fox.)

(The five sheets of statement, numbered 3 to 7, both inclusive, the first sheet headed "Invoices from Crawford-Doherty Foundry to Tuerck-MacKenzie," with an adding machine [17] slip attached, so offered, was thereupon marked Plaintiff's Exhibit 8 for identification.)

Q. Handing you Plaintiff's Exhibit 8 for identification, Mr. Fox, will you explain what those pages are.

A. Well, these are transcriptions of invoices.

Q. And where were they made?

A. They were made in the offices of Tuerck MacKenzie.

Q. And what dates are covered there?

A. August, 1942.

Q. To what? A. To October.

Q. Those were taken from the originals of invoices in the office of Tuerck MacKenzie Company?

A. Yes, sir.

The Court: You will have to bring those originals in if Mr. Henderson wants them.

Mr. Wagner: Yes, your Honor. They were subpoenaed sometime ago and I think it was quite definitely agreed that the gentlemen would be relieved from bringing all of these invoices in. They did on that occasion. There was a pre-trial and at that particular time I think it was agreed between the parties it would not be necessary to bring the originals in, in view of the fact that they were merely the foundation for the bill of particulars and for these transcriptions.

(Testimony of Glen Fox.)

Mr. Henderson: If the Court please, this matter can be [18] eliminated, I should think. We have already agreed to stipulate, and I am prepared to stipulate now, that the invoices as reflected by the bill of particulars, showing the item, the date, the rate and the prices charged are correct. So this, insofar as it relates to what he has said it relates, I have no objection to, but there are more things on there than he says. That is not confined strictly to the invoice. There is added to it other computations of other matters. So insofar as what he has addressed himself to, I will agree that the statement in the bill of particulars is correct.

The Court: All right. It is the same as this transcription?

Mr. Henderson: Well, as I say, there are other things added to it and of course I would object to that. If the other part, if the other columns are going to be considered by the Court I will object to it.

The Court: All right. We will see what Mr. Wagner wants to do with it. He has not offered it yet.

Mr. Wagner: Q. Will you explain, Mr. Fox, in making this transcription what captions are used across the top.

The Court: What are these other columns, Mr. Henderson?

A. Well, it shows the date——

The Court: Wait a minute.

Mr. Wagner: These computations include not

(Testimony of Glen Fox.)

only the invoice [19] number, and the date of the invoice, and kind of casting——

The Court: I am looking now at the bill of particulars.

Mr. Wagner: The ceiling price.

The Court: Tell me, what is on this transcription that is not on the bill of particulars? The columns on the bill of particulars are weights, price charged, ceiling, overcharge.

Mr. Henderson: Now of course you understood the ceiling and the overcharges are not what we are conceding.

The Court: All right. And those are the other two columns, Mr. Wagner?

Mr. Wagner: The ceiling and the overcharges apparently are all.

The Court: I get you.

Mr. Wagner: Yes.

Q. Now Mr. Fox, in making this particular transcription in this computation here, namely, Plaintiff's Exhibit 8 for identification, what was used by yourself in arriving at the indicated ceiling price or ceiling prices?

A. We used in this particular case, I believe, the prices that they charged during March, 1942.

Q. And where did you obtain those?

A. From invoices in the files of Tuerck MacKenzie Company.

Q. Did you make reference also to——

The Court: Invoices of the defendant?

A. Yes, sir. [20]

(Testimony of Glen Fox.)

Mr. Wagner: Q. Did you make reference also to the documents here that we have been discussing, Plaintiff's Exhibits for identification 1 to 7, inclusive?

A. No. This just shows what the March ceiling was supposed to be, and then the overcharge.

Q. Well, where did you get the March ceiling? That is what I am asking. Before you put it on there where did you get it?

A. We got it from the prices actually charged by Crawford & Doherty to Tuerck MacKenzie during March, 1942. We received those invoices from Tuerck MacKenzie, from Mr. MacKenzie.

Q. And those are the prices which you have indicated here? A. Yes, sir.

Q. Are those the prices that Mr. MacKenzie has indicated also in the previous documents that we have discussed here? A. Yes, sir.

Q. And those were used all the way through the transcription there? A. That is right.

Q. Then the other column captioned "Overcharge," how did you arrive at that?

A. We took the number of pounds at the price charged and took the number of pounds at the ceiling price and the difference between these two represented the overcharge.

Q. And those are the right-hand column, last column that is contained in that exhibit? [21]

A. Yes, sir.

Q. In that document. Have you totaled up the items indicated as being overcharges?

(Testimony of Glen Fox.)

A. Well, we totaled——

Q. With a tape, adding machine tape?

A. Oh, yes. This group here; do you want the amount?

Q. Yes. A. Represents \$1,535.16.

Q. And that covers what dates?

A. This is from August 21st to October 26th.

Q. 1942? A. Yes, sir.

Q. Very well.

The Court: What is your figure, one thousand thirty-five?

A. One thousand five hundred thirty-five sixteen.

Mr. Wagner: We will offer that.

The Court: It is admitted, subject to being connected up.

(The statement so offered and received, having been previously marked for identification, was further marked received as Plaintiff's Exhibit 8.)

Mr. Wagner: Have this marked for identification.

(The twelve sheets of tabulated statements so offered, the first bearing the heading Tuerck MacKenzie Co., to which was clipped [22] an adding machine tape, was marked Plaintiff's Exhibit 9 for identification.)

Q. Handing you Plaintiff's Exhibit 9 for identification, Mr. Fox, will you explain what that document is. How many pages are there in it?

(Testimony of Glen Fox.)

A. This is a transcription of invoices from Crawford & Doherty to Tuerck MacKenzie, beginning October 28th, 1942, and going through to December 30, 1942.

Q. Was that transcription made by yourself, or under your direction?

A. It was made under my direction. Not all of it was made by me.

Mr. Henderson: May I interrupt? What was that first date, please.

The Witness: Pardon me?

Mr. Henderson: The first date?

The Witness: The first date was October 28th.

Mr. Henderson: Thank you.

Mr. Wagner: Q. Referring to the column "Ceiling Price," captioned "Ceiling Price," were the ceiling prices as indicated in that column arrived at in the same manner as the previous exhibit? A. Yes, sir.

Q. You not only used invoices during the basing period but also the documents described as Plaintiff's Exhibits 1 to 7, [23] inclusive, for identification? A. That is right.

Q. And then the computation of your column "Overcharges" was arrived at in the same manner? A. Yes, in the same manner.

Q. What is the total tabulation of the computation called column "Overcharges"?

A. \$1060.07.

Mr. Wagner: We will offer the exhibit.

(Testimony of Glen Fox.)

The Court: It is admitted subject to being connected up.

(The statement so offered and received, having been previously marked for identification, was further marked received as Plaintiff's Exhibit 9.)

Mr. Wagner: Mark that for identification.

(The six sheets numbered 1 to 6, the first sheet being headed "Crawford—Doherty Invoices to Tuerck-MacKenzie Co.," numbered 1 to 6, inclusive, with an adding machine tape attached thereto, so offered, was marked Plaintiff's Exhibit 10 for identification.)

The Court: Why did you dismiss the first cause, Mr. Wagner?

Mr. Wagner: We determined to dismiss the first cause in this case, your Honor, at the same time we concluded the other [24] scrap iron case injunction suits.

The Court: You mean sometime ago?

Mr. Wagner: Yes.

The Court: What is the difference between the first cause and the second and third you are continuing to prosecute in this case?

Mr. Wagner: The second cause of action covers the sale of gray iron castings. The first cause of action covers purchases of scrap steel.

The Court: Of scrap?

Mr. Wagner: Yes.

The Court: The first covered scrap?

(Testimony of Glen Fox.)

Mr. Wagner: Purchases of scrap iron.

The Court: Oh, yes.

Mr. Wagner: The second covers sales of gray iron casting.

Q. Handing you Plaintiff's Exhibit 10 for identification, Mr. Fox, describe that document.

A. Well, this is a transcription of invoices from Crawford-Doherty Company to Tuerck-MacKenzie Company, beginning January 14, 1943, and going through to February 27, 1943.

Q. And did you arrive at the figures indicated as being ceiling prices in that document the same as you did in the previous exhibit?

A. Yes, sir. [25]

Q. Likewise a computation of the column indicated as being overcharges? A. Yes, sir.

Q. And what is the total of the column indicated as being overcharges? A. \$723.99.

Mr. Wagner: We will offer it.

The Court: It is admitted, subject to being connected up.

(The statement so offered and received, having been previously marked for identification, was further marked received as Plaintiff's Exhibit 10.)

Mr. Wagner: Mark that for identification.

(The letter so offered, dated October 22, 1942, Bingham Pump Company to Office of Price Administration, Portland, Oregon, was marked Plaintiff's Exhibit 11 for identification.)

(Testimony of Glen Fox.)

Q. Handing you Plaintiff's Exhibit 11 for identification, you identify that document, Mr. Fox.

A. This is a letter written by the Bingham Pump Company to the Office of Price Administration, Portland, Oregon, on October 22, 1942. It is written by Mr. C. B. Amos, who is the Purchasing Agent of the Bingham Pump Company.

Q. Was that letter written at your request? [26]

A. I presume it was.

Q. Well, do you remember?

A. Yes, it was written at my request.

Mr. Wagner: We will offer the document, subject, of course, to Mr. Henderson's objection.

The Court: Well, I shall lay it aside. We won't rule on it now.

Mr. Wagner: I want this marked for identification.

(The affidavit of C. B. Amos, of Bingham Pump Company, dated February 1st, 1943, so offered, was marked Plaintiff's Exhibit 12 for identification.)

The Court: I will ask a question, please, for my information. What is the subject of that last letter?

Mr. Wagner: It indicates a price raise—a price raise to Bingham Pump Company by Crawford & Doherty Company.

The Court: Any dates?

Mr. Wagner: A 12%, approximately 12% rise on April 14, 1942. The letter is dated October 22, 1942.

(Testimony of Glen Fox.)

Q. Handing you Plaintiff's Exhibit 12 for identification, Mr. Fox, will you identify that document.

A. This is a statement from Mr. C. B. Amos, of the Bingham Pump Company, in which he—it is a sworn statement, in which he states about the prices that were in effect during May, 1941, and prices that were in effect during April, 1942. Now this is [27] dated the 1st day of February, 1943, and signed by Mr. Amos.

Q. Was that document used by you in the course of this investigation to establish prices?

A. Yes, sir.

Mr. Wagner: We will offer the document.

The Court: No. the man who made it can use it, if he wants to, for reference.

Mr. Wagner: We will withhold it, then, until Mr. Amos arrives.

The Court: Yes.

Mr. Wagner: Mark that.

(The two file cards so offered, each headed "Cast Iron Castings, Crawford & Doherty," and attached to one sheet of paper, were marked Plaintiff's Exhibit 13 for identification.)

Q. Handing you Plaintiff's Exhibit 13 for identification, Mr. Fox, will you identify that document, or those documents.

A. These are cards, file cards out of the files of the Bingham Pump Company.

(Testimony of Glen Fox.)

Q. And what do they indicate?

A. Prices that they were paying for castings to Crawford & Doherty during May, 1941, and April, 1942.

Q. Is there any indication as to what the March prices were from those documents?

A. There was no price change to Bingham Pump between May—— [28]

Mr. Henderson: If the Court please, the witness is not answering the question.

Mr. Wagner: Q. Is there any indication as to what the market prices were?

Mr. Henderson: Answer it "yes" or "no," and then go ahead. A. Yes.

Mr. Wagner: Q. Well then, go ahead and explain it. What is the indication?

A. Well, the indications are that there was no price change between May, 1941, and April, 1942.

Mr. Henderson: If the Court please, I move that that answer be stricken. It is not in that document he is reading from. I know by inspecting it.

The Court: Well, it will avoid controversy not to try to go any further with this witness. Let your Bingham witness vouch for it, if he wants to.

Mr. Wagner: Q. Where did you get those documents, Mr. Fox?

A. I got them from Mr. Amos, of the Bingham Pump Company.

Q. And you have had them in your possession ever since? A. Yes, sir.

(Testimony of Glen Fox.)

Mr. Wagner: We will offer them, of course, subject to the objection.

The Court: They may be laid aside until Mr. Amos comes.

Mr. Wagner: Mark that for identification. [29]

(The affidavit of Clifford B. Amos, dated February 6th, 1943, so offered, was marked Plaintiff's Exhibit 14 for identification.)

Q. Handing you Plaintiff's Exhibit 14 for identification, Mr. Fox, will you describe that document. Identify the document.

A. This is an affidavit made by Mr. Amos. It outlines his position with the Bingham Pump Company and details what was on those cards a moment ago, the prices charged during May, 1941, and April, 1942.

Q. Does that affidavit indicate your previous statement to the effect there had been no change between those dates?

A. It does.

Q. This document—is that a sworn document?

A. Yes, sir.

Q. And that was used by you in the course of this investigation?

A. Yes, sir.

Q. And the document has been in your possession ever since?

A. Yes, sir.

Mr. Wagner: We will offer the document.

The Court: Lay it aside. Mr. Amos may use it to refresh his recollection, if he wants to.

(Testimony of Glen Fox.)

Mr. Wagner: Mark that for identification.

(The statement so offered, consisting of 6 sheets, the first headed "Crawford Doherty Invoices to Bingham Pump Co.", was marked Plaintiff's Exhibit [30] 15 for identification.)

Q. Handing you Plaintiff's exhibit 15, Mr. Fox, will you identify and describe that document.

A. This is a transcription of invoices from Crawford & Doherty to the Bingham Pump Company, starting the 5th of January, 1943, and carrying through to the 10th of March, 1943.

Q. And from what was this transcription made?

A. Made from invoices.

Q. Original invoices?

A. Original invoices.

Q. Where?

A. From the files of the Bingham Pump Company, in their offices.

The Court: Is that covered in your bill of particulars?

Mr. Wagner: Yes.

The Court: You make the same stipulation, Mr. Henderson?

Mr. Henderson: Yes, your Honor.

Mr. Wagner: We have two other exhibits here of the same character.

The Court: All right.

Mr. Henderson: I wonder if counsel wants to get in at this time the total.

Mr. Wagner: Yes.

(Testimony of Glen Fox.)

The Court: Just call it off.

Mr. Wagner: The total is \$1315.82, as indicated by the tape. [31] I will have this identified as 16.

The Court: 15 will be admitted, subject to being connected up.

(The statement so offered and received, having been previously marked for identification, was further marked received as Plaintiff's Exhibit 15.)

Mr. Wagner: Mark this 16.

(The statement, consisting of 14 sheets, numbered 18 to 31, both inclusive, the first headed "August, 1942—to Bingham Pump—Crawford & Doherty", so offered, was marked Plaintiff's Exhibit 16 for identification.)

Mr. Wagner: The total as indicated by the tape on that—read the total on the tape there. This is \$2,036.23, and the dates covered are August 7, 1942, to October 22, inclusive, 1942.

The Court: That is Plaintiff's Exhibit 16?

Mr. Wagner: Plaintiff's Exhibit 16.

The Court: That is made in the same way, witness, as the other one?

A. Yes, sir.

Mr. Wagner: Q. Is that right, Mr. Fox?

A. Yes, sir. [32]

The Court: He won't need it any further. Get up another one. That will be admitted, subject to being connected up.

(The statement so offered and received, hav-

(Testimony of Glen Fox.)

ing been previously marked for identification, was further marked received as Plaintiff's Exhibit 16.)

Mr. Wagner: Have this marked 17.

(The statement, consisting of 12 sheets, numbered 1 to 12, the first headed "Crawford Doherty Co. Invoices to Bingham Pump Co.", so offered, was marked Plaintiff's Exhibit 17 for identification.)

The Court: You can call the dates and the amounts, the same as you did before.

Mr. Wagner: Very well. It is a transcription covering invoices from 11/9/42, November 9th, 1942, to and including December 31, 1942.

The Court: Bingham Pump Company?

Mr. Wagner: Sales to Bingham Pump Company, the total of which amounts to \$1953.56.

The Court: That is the alleged overcharge?

Mr. Wagner: The alleged overcharges, as indicated by the tape.

The Court: \$1953.56. Admitted, subject to being connected up. [33]

(The statement so offered and received, having been previously marked for identification, was further marked received as Plaintiff's Exhibit 17.)

Mr. Wagner: The next involves sales to Wilamette Iron & Steel Corporation. Have that marked for identification.

(Testimony of Glen Fox.)

(The affidavit of W. B. Porter so offered was thereupon marked Plaintiff's Exhibit 18 for identification.)

Q. Handing you Plaintiff's Exhibit 18, Mr. Fox, for identification, explain what that document is.

A. This is a statement from W. B. Porter, who is the purchasing agent of the Willamette Iron & Steel, and he——

Q. What is the date of the document?

A. That is dated January 26th, 1943.

Q. And what does it cover?

A. It covers prices paid Crawford & Doherty beginning June 25th, 1942.

Q. Until when?

A. September 30th, 1942.

Q. And what this used by yourself in the course of your examination and investigation of this matter?

A. Yes, sir.

Q. And how was it used?

A. It was used to substantiate the fact that Crawford and Doherty had raised prices to Willamette Iron & Steel. [34]

Q. And does it form the basis of ceiling prices as indicated in your subsequent investigation?

A. Yes, sir.

Mr. Wagner: We will offer it.

The Court: That will be laid aside.

Mr. Wagner: That is the next one for identification.

(The affidavit of W. B. Porter dated

(Testimony of Glen Fox.)

February 6th, 1943, so offered, was marked Plaintiff's Exhibit 19 for identification.)

Q. Handing you Plaintiff's Exhibit 19 for identification, Mr. Fox, please identify that and explain how it came into your possession.

A. This is an affidavit sworn to by W. B. Porter.

Q. Who is Mr. Porter?

A. Well, he was the purchasing agent—contract engineer for the Willamette Iron & Steel Corporation.

Q. Did he make that affidavit at your instance?

A. Yes, sir.

Q. What does the affidavit cover?

A. It outlines the prices that the contract—

The Court: The date of the affidavit?

A. The date of the affidavit is the 6th day of February, 1943.

Mr. Wagner: Q. And what does it cover, what dates?

A. It sets forth the prices charged by Crawford & Doherty Company on June 25th, 1941. [35]

Q. And anything else?

A. And from August 1st, 1942, to February 1st, 1943.

Q. And was this document used by you during the course of this investigation?

A. Yes, sir.

Q. In what way?

A. Well, for the purpose of showing that the—

The Court: Oh, it doesn't matter. It may be laid aside and used, if needed, by the man who made it to refresh his recollection.

(Testimony of Glen Fox.)

Mr. Wagner: Very well. Your Honor. Have this marked for identification.

(The statement, consisting of 1 sheet, headed "Invoices from Crawford Doherty Co. to Willamette Iron & Steel Co.", so offered, was marked Plaintiff's Exhibit 20 for identification.)

Mr. Wagner: Also this one.

(The statement, consisting of 1 sheet, headed "Invoices from Crawford Doherty Co., to Willamette Iron & Steel Corp.", so offered, was marked Plaintiff's Exhibit 21 for identification.)

The Court: Can you tell what 20 is, Mr. Wagner? Mr. Wagner: 20 related— [36]

The Court: A transcription?

Mr. Wagner: Yes, a transcription of Willamette Iron & Steel Company sales.

The Court: And dates?

Mr. Wagner: Covering period October 26th, 1942, to and including December 31, 1942.

The Court: Amounts?

Mr. Wagner: The amount of the overcharges—I have \$3646.20 on a revision, which is Exhibit 21. That is a revision of the original transcription.

The Court: 21 is a revision of 20?

Mr. Wagner: Yes.

The Court: They will both be admitted, subject to being connected up.

(The two statements so offered and received, having been previously marked for identifica-

(Testimony of Glen Fox.)

tion were further marked received as Plaintiff's Exhibit 20 and Plaintiff's Exhibit 21, respectively.)

Mr. Wagner: Mark that for identification.

(The photostatic copies of four purchase orders of Willamette Iron and Steel Corporation to Crawford & Doherty Foundry Company, attached together, were thereupon marked Plaintiff's Exhibit 22 for identification.)

Mr. Wagner: Have you any objection to those going in? [37] They are photostats.

Mr. Henderson: Before I go into this, what was 21?

Mr. Wagner: 21 was a revision of 20.

Mr. Henderson: The same dates and the same amounts?

Mr. Wagner: Yes, covering the same transaction.

The Court: \$3646.20.

Mr. Wagner: Q. Handing you Plaintiff's Exhibit 22 for identification, Mr. Fox, will you describe and identify those photostats.

A. Well, these are photostatic copies of purchase orders from Willamette Iron and Steel, covering castings that they were buying—that they had bought from Crawford and Doherty Foundry Company. One is dated October 25, 1941; one is dated December 3, 1941, and one is dated December 30th, 1941, and—there are two of them dated December 30th, 1941.

(Testimony of Glen Fox.)

The Court: Where did you get them? Where did you find the originals?

A. Well, we took these from the Willamette Iron and Steel Corporation.

Mr. Wagner: Q. Records? A. Records.

Q. The originals are now in the possession of the Willamette Iron & Steel Corporation?

A. Yes.

Mr. Wagner: We will offer them. [38]

The Court: Well, they will have to be proved by the Willamette, unless Mr. Henderson wants to stipulate on them.

Mr. Henderson: Let me see them again, please. I might be able to.

Mr. Wagner: They indicate sales during the period August 1st, 1941, to February 1st, 1942—sales and delivery of casting.

Mr. Henderson: Counsel, may I—I don't quite understand. We have the invoices. Do we have the invoices in these complications, or transcriptions, that cover these? No, we wouldn't.

Mr. Wagner: I don't believe so.

Mr. Henderson: Wouldn't it be the invoice and not the order? The original of this is in the Willamette Iron and Steel Corporation's possession. I don't see the evidenciary value of them.

Mr. Wagner: Q. Mr. Fox, can you explain to us?

A. We have no—I don't think we have any invoices to cover those.

Q. Now the original documents that were the basis for these photostats were what? Were they.

(Testimony of Glen Fox.)

originals, original purchase orders, or were they Willamette Iron & Steel Corporation's duplicate purchase orders?

A. Well, I don't recall.

The Court: Well, Crawford & Doherty would have the purchase orders.

Mr. Wagner: Crawford & Doherty would have the originals, but I believe these were taken from duplicates, duplicate originals [39] that necessarily were retained by Willamette Iron & Steel Corporation. But I believe Mr. Porter can tell us about that this afternoon, if there is any question about it.

The Court: Well, lay it aside. Your dates didn't jibe that you gave a minute ago, Mr. Wagner, with the dates Mr. Fox gave. He says they are dated October 25, '41/3/41, and two of them were dated 12/30/41.

Mr. Wagner: That is right.

The Court: You gave some dates both earlier and later than what he just said.

Mr. Wagner: Well, what I was referring to there, your Honor, were the base period dates for Maximum Price Regulation, which are more than the dates here—base period dates August 1st, '41, to February 1st, 1942. All of these sales were made within that base period.

The Court: Well, these bear then on sales made after October 26th, '42?

Mr. Wagner: That is right.

Mr. Henderson: Did your Honor rule on this?

The Court: Sir?

(Testimony of Glen Fox.)

Mr. Henderson: I understood you had ruled on this?

The Court: We laid it aside.

Mr. Henderson: Yes.

Mr. Wagner: Q. I would like to ask you one question further, Mr. Fox, in connection with this Plaintiff's Exhibit 22 for [40] identification. Was this used in your computation of overcharges in connection with sales to Willamette Iron and Steel Corporation? A. Yes, sir.

Mr. Wagner: This is for identification.

The Court: Do you want a figure there? Is that what you are going to ask?

Mr. Wagner: We have already had the Willamette Iron and Steel Corporation transcriptions in.

The Court: Which include those?

Mr. Wagner: No; which were based upon those.

The Court: Well, they include those transactions?

Mr. Wagner: Yes.

The Court: Sales made pursuant to those purchase orders?

Mr. Wagner: Sales made subsequent to the dates of these purchase orders.

The Court: All right.

Mr. Wagner: These form the basing dates.

The Court: All right.

Mr. Henderson: You haven't introduced, I understand, anything showing those orders were ever filled. You don't claim that?

(Testimony of Glen Fox.)

Mr. Wagner: Well——

The Court: Anybody who is a witness does not need to stay. They may come back at 1:30.

(The statement of Attorney William Bates dated [41] January 29, 1943, so offered, was marked Plaintiff's Exhibit 23 for identification.)

Mr. Wagner: Q. Handing you Plaintiff's Exhibit 23 for identification, Mr. Fox, will you describe and identify that.

A. Well, this is a statement made by Attorney W. Bates, who was a superintendent of the Iron Fireman Manufacturing Company. It concerns prices charged.

The Court: We are on another account now?

Mr. Wagner: Iron Fireman.

The Witness: It concerns prices charged during February, 1942.

Mr. Henderson: If the Court please, I presume now would be the appropriate time to object to anything that relates to Iron Fireman. There is no mention of the Iron Fireman in this complaint.

The Court: Did you know that this was coming up?

Mr. Henderson: Well, it was furnished in the bill of particulars but it is not in the complaint.

Mr. Wagner: No, I don't see it, either, in the complaint.

The Court: Do you want to amend?

Mr. Wagner: Well, I think that it is covered by the term "and others".

(Testimony of Glen Fox.)

The Court: You may amend, if you want to.

Mr. Wagner: Very well. I will, your Honor.

The Court: You can write out your amendment during the [42] recess.

Mr. Wagner: Thank you, your Honor.

The Court: Subject to Mr. Henderson's objection, which he can state at that time if he wants to. How much are you going to claim on Iron Fireman?

Mr. Wagner: Iron Fireman is \$3897.51.

The Court: Now you had better start over again, Mr. Fox.

Mr. Wagner: Yes, Mr. Fox.

The Witness: Well, this is a statement from Attorney W. Bates, who is the plant superintendent of the Iron Fireman Company, and the statement involves prices paid during 1942 and up to 1943.

The Court: What do you mean, "up to"? You mean during the year 1942?

A. Yes; during the year of 1942, March 27, 1942, to January 1, 1943.

The Court: Was there a sale on January 1, 1943?

A. Until. It says until January, 1943.

The Court: It would mean then during the year 1942, wouldn't it? A. Yes, sir.

Mr. Wagner: Q. And this document was used by yourself, was it, Mr. Fox, in making your subsequent computations?

A. Yes, sir.

Q. And transcriptions? [43]

(Testimony of Glen Fox.)

The Court: What was the date of that affidavit?

A. On the 29th of January, 1943.

Mr. Wagner: Q. And the figures indicated by that document were used by you as ceiling prices in your transcription of invoices?

A. Yes, sir.

Q. And subsequent sales? A. Yes.

Mr. Wagner: We will offer it.

The Court: Well, Mr. Bates can use it, if necessary, to refresh his recollection.

Mr. Wagner: Have this marked for identification.

(The statement of Attorney W. Bates dated October 16, 1942, so offered, was marked Plaintiff's Exhibit 24 for identification.)

The Court: Maybe I had better state we are going to start at 1:30. If you have any other witnesses you might be calling them now, if you had expected them to come at two. What have you got now, Mr. Fox?

A. Well, this is a statement made by Mr. Attorney W. Bates, of the Iron Fireman Company.

The Court: Date?

A. 16th of October, 1942.

The Court: Subject?

A. Subject is prices charged for castings from Crawford and [44] Doherty to the Iron Fireman Company.

The Court: Dates?

The Witness: Pardon me.

(Testimony of Glen Fox.)

Mr. Wagner: Q. What are the dates that are covered there?

A. It covers February, 1942, was when they started negotiations, and the first delivery was made March 27, 1942.

Q. And does that indicate the prices at which deliveries were made? A. Yes.

Q. Was that used by you in your subsequent computation of Iron Fireman transcriptions?

A. Yes, sir.

Q. For establishing the ceiling prices?

A. Yes, sir.

Q. For the particular casting that is indicated?

A. Yes, sir.

Mr. Wagner: We will offer that.

The Court: Well, the maker of it may use it, if he needs it.

Mr. Wagner: Mark that for identification.

(The statement so offered, consisting of 5 sheets, numbered 1 to 5, both inclusive, the first headed "Iron Fireman Mfg. Co. Indus. Div.", was marked Plaintiff's Exhibit 25 for identification.) [45]

The Court: Is this 25?

Mr. Wagner: Yes, your Honor.

The Court: Transcription? A. Yes, sir.

Mr. Wagner: Q. What does the transcription cover?

A. This covers October 27 through and including December 31st.

(Testimony of Glen Fox.)

Q. What years? A. 1940—1942.

The Court: Iron Fireman?

A. Iron Fireman.

The Court: Sales by Crawford and Doherty?

A. It is Crawford & Doherty sales to Iron Fireman.

The Court: Made up from invoices you find in Iron Fireman's records? A. That is right.

Mr. Wagner: Q. The column indicated "Ceiling price", where was that ascertained by yourself?

A. From records of prices charged during March, 1942, in the files of the Iron Fireman Company.

Q. Where any of the prices that are indicated there as the ceiling prices taken from Willamette Iron and Steel Corporation prices?

A. Some of them. There is some connection there but I don't recall what it is.

The Court: It will be received subject to being connected up.

Mr. Wagner: Thank you, your Honor. [46]

(The statement so offered and received, having been previously marked for identification, was marked received as Plaintiff's Exhibit 25.)

Q. What is the amount indicated on the adding machine tape there?

Mr. Henderson: Counsel, aren't your claims—

The Court: Let's get the amount. Pardon me.

Mr. Wagner: The amount is \$3897.51.

The Court: You have them added up?

(Testimony of Glen Fox.)

Mr. Wagner: Yes. What did you say, Mr. Henderson?

Mr. Henderson: Aren't your claims on account of Iron Fireman under Maximum Price Regulation 244?

Mr. Wagner: Yes, your Honor, that is true.

Mr. Henderson: Was the witness testifying in regard to prices in March, 1944?

Mr. Wagner: Well, it was apparently a mistake on the witness' part. I don't think that would change the regulation nor the law, though.

Mr. Henderson: Well, I assume his Honor wants some evidence as to how—well, this being offered to affect the Iron Fireman it seems to me like it ought to be connected up some way.

Mr. Wagner: There may be an error, or a misstatement on my part, with respect to the effective date of M. P. R. 244.

Mr. Henderson: It is October 26th?

Mr. Wagner: 1942.

Mr. Henderson: Yes. [47]

Mr. Wagner: Yes. If I said 1943 I would like to have the record——

The Court: Well, you did say '43.

Mr. Wagner: Well, it is '42.

The Court: Now to meet Mr. Henderson's point, your transcription of sales, beginning on the day after the effective date of M. P. R. 244 on October 27th——

Mr. Wagner: Yes, sir.

(Testimony of Glen Fox.)

The Court: And run through that year to 12/31/42?

Mr. Wagner: That is right.

The Court: Now you base your ceiling price—you find your ceiling price based on the sales between August 1, '41, and February 1, '42. Right?

Mr. Wagner: That is right.

The Court: And where did you find this?

Mr. Wagner: They are Willamette Iron and Steel Corporation——

Mr. Henderson: Well, I think the witness ought to testify, if he is going to testify.

The Court: All right. Now we have got that clear. The witness says he does not know, so it hasn't been covered.

Mr. Wagner: Let's have this marked for identification.

(The photostatic copy of Purchase Order of Willamette Iron and Steel Corporation to Crawford & Doherty Foundry Company, dated June 25, 1941, with two additional sheets [48] of photostatic copy of agreement made June 25, 1941, between Willamette Iron and Steel Corporation and Crawford & Doherty Foundry Co. and "Escalator Clause", attached, were marked Plaintiff's Exhibit 26 for identification.)

Q. Do you identify that document, Plaintiff's Exhibit 26 for identification, Mr Fox?

A. This is a photostatic copy of a contract or

(Testimony of Glen Fox.)

purchase order placed by Willamette Iron and Steel on June 25, 1941, with the Crawford & Doherty Foundry Company, and it covers items that were—this order was to have been held on file, I believe, and orders shipped against it.

Mr. Henderson: Now just a minute.

Mr. Wagner: Just identify the document itself.

The Witness: That is the document.

Q. What is the attachment to the purchase order?

A. Well, the second page is a statement by—well, it is a contract. It is a contract between the Willamette Iron and Steel and the Crawford & Doherty Company.

Q. Did you obtain this photostatic copy from the original? Was it made under your direction?

A. Well, I received it from the Willamette Iron & Steel.

Q. That is, the original? A. Yes.

Q. Then you had this photostat made of it? [49]

A. Yes.

Q. And who are the signatories to the contract?

A. C. H. Pape; he is for the first party, Willamette Iron and Steel Corporation; and Don B. Card, for the Crawford and Doherty Foundry Company.

Mr. Wagner: Do you have any objection to that contract going in, Mr. Henderson?

Mr. Henderson: Counsel and your Honor, I though that was just another one of those purchase orders. I didn't know there was a contract attached.

(Testimony of Glen Fox.)

Mr. Wagner: The contract, with the escalator clause, is attached.

Mr. Henderson: We admit that the——

The Court: It is admitted.

Mr. Henderson: —that it is a photostatic copy of it.

(The photostatic copies of documents so offered and received, having been previously marked for identification, were further marked received as Plaintiff's Exhibit 26.)

PLAINTIFF'S EXHIBIT No. 26

PURCHASE ORDER

WILLAMETTE IRON AND STEEL CORPORATION



2860 N. W. FRONT AVENUE
PORTLAND, OREGON

To: Crawford & Doherty Foundry Co.

PURCHASE ORDER No. 10508

TO BE SHOWN ON ALL
INVOICES, SHIPPING
PAPERS, PACKAGES, ETC.

4604 S.E. 17th Ave.

Portland, Oregon

DATE June 25

TERMS Regular

F.O.B. Our Plant

DELIVER TO Machine Shop

SHIP VIA TRANSPORTATION CHARGES MUST BE PREPAID. IF QUOTED F.O.B. SHIPPING POINT, ATTACH ORIGINAL PAID FREIGHT BILL TO INVOICE

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Castings and Patterns as per list:		
	600	Only	Dwg. No. 8893-4 <i>Elect. Box</i> Patt. No. #24484 ✓		
	50	"	" 18132-8 <i>Guide Bolt</i> " 24488 ✓		
	50	"	" 18142-8 <i>H.P. Valve Ch. Cover</i> " 24542 ✓		
	50	"	" 18143-8 <i>Liner</i> " 24505 ✓		
	150	"	" 18184-8 <i>Slipper</i> " 24585 ✓		
	50	"	" 18243-8 <i>Sleeve</i> " 24673 ✓		
	50	"	" 18244-8 " " 24674 ✓		
	50	"	" 18268-8 <i>Bush</i> " 24701 ✓		
	50	"	" 18294-8 <i>Offset</i> " 24728 ✓		
	150	"	Crosshead Guide Drain Funnels		
	100	"	Dwg. No. 18309-8 Patt. No. #24735 ✓		
			M.P. & L.P. Valve Rod Guide Domes		
			Dwg. No. 18262-8 Patt. No. #24699 ✓		
			Price - .08 per lb.		
			Inspection: See Para. 5 of Purchase Agreement.		
			Delivery: 1 Casting only off each pattern shall be furnished within 15 days after receipt of patterns, after these castings have been checked and approved, production shall be, two sets or more per month for the next three months, and then four sets or more per month until completion of order.		
			1/50 of the above quantities constitutes 1 set.		
			Confirming Order by Mr. Page		

*10/11/1941
all phone Mr. Murdoch
and cancel on
2 sets. Order to come
from Mr. X Harsh. Said to
advise him immediately if we don't
get from Harsh promptly.*

24901

FOR COMPANY USE ONLY

JOB ORDER **DELIVER GATE #2**

DEPARTMENT OR SHOP

PURPOSE FOR WHICH ORDERED **MACH. SHOP**

ORIGINATED BY **Page**

ON REQUESTION NO.

WILLAMETTE IRON AND STEEL CORPORATION

BY *CM*

For further information concerning this regulation, contact

MR. G. K. MURDOCH

(Testimony of Glen Fox.)

Plaintiff's Exhibit No. 26—(Continued)

This Agreement made in duplicate this 25th day of June, 1941, by and between Willamette Iron and Steel Corporation, first party, and Crawford & Doherty Foundry Co., second party.

Witnesseth: That the parties hereto, in consideration of the covenants and stipulations herein-after contained, mutually agree as follows:

(1) Second party agrees for the price and payments therein specified to furnish all the material and perform the work and labor necessary to fulfill the terms and specifications set forth in detail in the annexed purchase order No. 10594 of first party, dated June 25th, 1941, which purchase order with its attached specifications, drawings, blue prints and/or other data or documents is hereby made a part of this agreement.

(2) The said purchase order and this agreement shall be performed and completed promptly within the time specified in said job order. Time and strict performance are made of the essence of this agreement. Second party agrees to prosecute the work on over time basis if necessary to complete the work within the specified time.

(3) Payment to second party shall be made upon completion and delivery to first party or at the time and in the manner specified in said purchase order.

(4) First party by written order may make changes or modifications in the designs, specifica-

(Testimony of Glen Fox.)

Plaintiff's Exhibit No. 26—(Continued)

tions, drawings or blueprints within the general scope of this contract. If such changes cause an increase or decrease in the amount due under this contract or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly.

(5) All material and workmanship shall be subject at any time to inspection and/or tests by first party or its nominees; The United States Maritime Commission, and Gibbs & Cox Inc., its agent; The American Bureau of Shipping and/or The Bureau of Maritime Inspection and Navigation. Defective and unsatisfactory material and/or workmanship may be rejected by first party or its nominees and shall be promptly corrected or replaced by second party, as ordered by first party.

(6) All material shall be of the best grade and all work shall be performed in a skilled and first class workmanlike manner.

(7) Second party agrees to comply with all pertinent United States and State laws, rules and regulations as to hours, wages and working conditions and especially the Walsh-Healy Act and all social security and compensation laws.

(8) The second party shall not assign or transfer this contract or sublet any part of the work covered hereby.

(9) The second party shall be responsible for

(Testimony of Glen Fox.)

Plaintiff's Exhibit No. 26—(Continued)

and assumes all damages to persons or property that occur in connection with their prosecution of the work and shall be responsible for the proper care and protection of all materials and work performed until completion and final acceptance.

(10) Performance and delivery shall be made by second party free of all liens of materialmen, mechanics and laborers.

Willamette Iron and Steel Corporation.

By C. H. PAPE,

First Party.

CRAWFORD & DOHERTY
FOUNDRY CO.,

By DON B. CARD,

Secy.-Treas.,

Second Party.

Escalator Clause

(1) The contract price shall be subject to adjustments for ~~changes~~ changes in material and labor cost, such changes to be computed separately. Provided however, that the Vendor shall act promptly to purchase as much material as practicable at the prevailing price at the date this commitment is ratified by the Buyer and in respect to any balance of material, purchase will be made as promptly as practicable. The detailed method to be followed in the administration of this adjustment is to be mutually agreed upon, consideration in this connection to be given to the method used by the Navy and the United

(Testimony of Glen Fox.)

Plaintiff's Exhibit No. 26—(Continued)

States Maritime Commission in similar Commitments, all subject to the following understandings:

1st. Any increase or decrease on account of labor costs shall be limited to an amount not exceeding that represented by the percentage increase or decrease from time to time, over the figures given at the time of approval of this commitment by the buyer, in the index of average hourly earnings in all manufacturing industries (durable goods) as compiled by the United States Department of Labor, Bureau of Labor Statistics. The Buyer will obtain said index for the month in which this commitment is ratified and will determine to the nearest one-tenth of one percent any increase or decrease in said index occurring in any month during the course of the performance of the work under this commitment, and the price shall be adjusted by an amount equal to the expenditures made for direct labor employed in the performance of work hereunder in any month, multiplied by the increase or decrease in such index rate occurring in such month as determined by the Buyer.

2nd. Any increase or decrease on account of material costs shall be limited to an amount not exceeding that represented by the percentage increase or decrease from time to time, over the figures given at the time of approval of this commitment by the buyer, in the index numbers of the wholesale prices for the Metals and Metal Products Group of Commodities, as compiled by the United States

(Testimony of Glen Fox.)

Plaintiff's Exhibit No. 26—(Continued)

Department of Labor, Bureau of Labor Statistics. The Buyer will obtain said index for the month in which this commitment is ratified and will determine to the nearest one-tenth of one percent any increase or decrease in said index rate occurring in any month during the course of the performance of the work under this commitment, and the price shall be adjusted by an amount equal to the expenditures made for materials used in the performance of the work hereunder in any month, multiplied by the increase or decrease in such index rate occurring in such month as determined by the Buyer.

Mr. Wagner: Then will you admit, Mr. Henderson, that Plaintiff's Exhibit 22 for identification, which are purchase orders, were purchase orders that were executed pursuant to that contract?

Mr. Henderson: Mr. Reporter, will you please read that.

(Last statement by Mr. Wagner read.) [50]

Mr. Henderson: I can't admit anything like that. I don't know why, or how Willamette Iron & Steel do their business. I am representing Crawford & Doherty. What they make out in their office I am not in a position to admit. I don't know.

Mr. Wagner: Very well.

(Testimony of Glen Fox.)

Mr. Henderson: I will produce, or anything produced by Crawford & Doherty I will be very glad to indicate our position with respect to that, as I did with respect to that contract that was signed by Crawford & Doherty, by Mr. Card, a photostatic copy of which is attached to Exhibit 26.

Mr. Wagner: Q. Mr. Fox, in ascertaining ceiling prices in the instances of these four purchases of Crawford & Doherty Company, in your investigation did you verify these documents, referring to Plaintiff's Exhibit 1 for identification, did you verify the fact that those were the prices in effect before April 13th, 1942, from any original records?

A. Yes, sir.

Q. To what original records did you go to verify them?

A. The original invoices in the files of the Tuerck MacKenzie Company.

Q. The original invoices. And what did your investigations of those original invoices disclose? Did they disclose the true prices——

A. The proof that these were the prices charged prior to April 13th, 1942. [51]

Q. The highest prices? A. Yes, sir.

Q. Did you examine all of the invoices that were in the files of Tuerck MacKenzie Company from the Crawford & Doherty Company in connection with sales and deliveries of castings?

A. We examined all the original invoices that covered purchases during March, 1942.

(Testimony of Glen Fox.)

Q. Did you also cover original invoices in those files during the period August 1st, 1941, to February 1st, 1942? A. Yes, sir.

Q. Referring to Plaintiff's Exhibit 2 for identification and Plaintiff's Exhibit 7 for identification, and Plaintiff's Exhibit 6 for identification, did you pursue the same method in ascertaining the variety of the statements contained in those documents?

A. I don't quite understand.

Q. Did you make an examination of invoices, original documents in the files of Tuerck MacKenzie Company during March of 1942 and during the period August 1st, 1941, to February 1st, 1942, to see whether or not the prices indicated in those Exhibits that you have there—what are they, Exhibits 6, 7 and 8? A. 1, 2 and 3.

Q. —to determine whether or not the statements contained in those documents were true?

A. Yes, sir.

Q. You did that; and what did you find? [52]

A. I found that they were true.

Q. They are true. You examined all of the invoices during those periods in the file of Tuerck MacKenzie Company? A. Yes, sir.

The Court: And they were the highest prices?

Mr. Wagner: Q. And that those were the highest prices? A. Yes, sir.

Mr. Wagner: That is all with those exhibits.

Q. Was that method employed by you in your investigation likewise in connection with sales to the Bingham Pump Company, Mr. Fox?

(Testimony of Glen Fox.)

A. Yes, sir.

Q. And covering the same period?

A. Yes, sir.

Q. And what did you ascertain from your investigation of the Bingham Pump Company's files?

A. Referring to the Bingham Pump Company, we went through all of the invoices covering castings delivered during March, 1942.

Q. Referring now to Plaintiff's Exhibit 11, Plaintiff's Exhibit 12, Plaintiff's Exhibit 13 and Plaintiff's Exhibit 14, all for identification, did your examination of original invoices from the files of the Bingham Pump Company disclose that the statements contained in those documents were true?

A. Yes, sir.

Q. And that those prices before indicated by those particular [53] documents were the highest prices charged during the respective periods, August 1st, 1941, to February 1st, 1942, and March of 1942?

A. Yes, sir.

The Court: With that verification you might put those in now.

Mr. Wagner: Thank you, your Honor.

The Court: Subject to any objection Mr. Henderson cares to state.

Mr. Wagner: We will renew our offer, Mr. Henderson. We renew our offer also of Bingham Pump Company and Tuerck MacKenzie Company's.

The Court: I intended to include the Tuerck MacKenzie and Bingham, he just having verified that particular one.

(Testimony of Glen Fox.)

Mr. Henderson: If the Court please, may I take just a minute? There are some conclusions stated here I want to see.

The Court: I think we may as well adjourn now. Come back at 1:30.

Mr. Henderson: So that I may understand your tender, 12, 13, 14, 11——

Mr. Wagner: Also 2.

Mr. Henderson: 2.

Mr. Wagner: 6, 7 and 1.

Mr. Henderson: On the assumption his testimony of an examination of the books could have established the truthfulness [54] of the statements contained in these exhibits; is that right?

Mr. Wagner: And the fact that the prices indicated there as being the highest prices during the respective business periods were the highest prices.

Mr. Henderson: Are you offering these for any other purpose than the prices or are you offering them for the contents of the entire Exhibit? I assume you are offering it for the contents of the entire Exhibit, aren't you?

Mr. Wagner: Yes. The contents deal entirely with the prices.

Mr. Henderson: I will state my position when we reconvene.

(Thereupon, at 11:55 o'clock A.M. a recess was taken until 1:30 o'clock P.M. of this day, Tuesday, December 12th, 1944, at which time the Court convened and the following further proceedings were had herein:)

GLEN FOX

thereupon resumed the witness stand as a witness in behalf of the plaintiff and further testified as follows

Direct Examination (Continued)

Mr. Wagner: If the Court please, I think just prior to the noon recess Mr. Henderson indicated there were some conclusions that were included in the various exhibits that the Court entered. I didn't know whether he wanted to make inquiry or not. [55]

Mr. Henderson: No. If the Court please, I have examined that further and the conclusions are of no significance, so I will make no point on that.

Mr. Wagner: I think I did mention the numbers. If not, I would like to have them in the record. The exhibits which are now admitted, if the Court please, are Plaintiff's Exhibit 1, 6, 7, 11, 12, 13, 14 and 2; all pertaining to base prices of the Tuerck MacKenzie Company and Bingham Pump Company.

(The documents so offered and received, having been previously marked for identification, were marked received as Plaintiff's Exhibits 1, 2, 6, 7, 11, 12, 13 and 14, respectively.)

(Testimony of Glen Fox.)

PLAINTIFF'S EXHIBIT No. 1

BASE PRICES ON CASTINGS FROM CRAWFORD
DOHERTY CO. TO TUERCK MacKENZIE CO.

Prices Effective Before April 13, 1942

General "E" Meehanite castings .....	.0925 per lb.
Cores and all other "B" meehanite castings.....	.1025 "
Bend Jackets .....	.15 "
Bell End pallets up to 12" .....	.10 "
Bell end pallets over 12" .....	.11 "
Culvert pallets up to 12" .....	.11 "
Culvert pallets over 12" .....	.12 "
Irrigation pallets up to 12" .....	.12 "
Irrigation pallets over 12" .....	.13 "

TUERCK MacKENZIE CO.

By WILLIAM J. MacKENZIE
Sec.-Treas.

PLAINTIFF'S EXHIBIT No. 2

Sept. 29, 1942

Witness

Glen Fox

Sec.-Treas.

I, William J. MacKenzie, President of the Tuerck MacKenzie Co, located at 687 N. Thompson St., Portland, Oregon, certify to the office of Price Administration an agency of the U. S. Government, that as Sec. Treas. of the above company I have access to, and am familiar with the book keeping system & general office methods used by the Tuerck

(Testimony of Glen Fox.)

Mackenzie Co. I am thoroughly familiar with each & every item The Tuerck MacKenzie Co. buys from the Crawford Doherty Foundry Co. I also know exactly where each item we buy from the Crawford Doherty Co., fits into the machines that we assemble.

I place the items on Crawford Doherty invoices in the classifications specified in their letter to us of April 13, 1942 as follows:

The invoices that come under the General E. Meehanite Castings classification are as follows:

#26392	Dated	3/26/42	Totaling	35.80	
#25760	"	3/26/42	"	12.49	
26394	"	3/26/42	"	12.49	
26391	"	3/26/42	"	48.75	
26395	"	3/27	"	69.47	
26396}	"	3/27	"	9.25	
25759}	"	3/27	"	9.25	
26440	"	3/31	1209# "	111.85	
26439	"	3/31	"	104.25	
26637	"	4/15	"	45.33	
26638	"	4/17	"	140.05	
26618	"	4/28	"	93.06	
26654	"	4/29	"	59.29	
26645	"	4/30	"	71.50	
26647	"	4/30	"	185.74	
26640	"	4/30	"	87.60	947#
26643	"	4/30	"	51.62	558#
26652	"	4/30	"	91.30	
26650	"	4/30	"	90.42	
26642	"	4/30	"	210.07	
26646	"	4/30	"	114.33	
26653	"	4/30	"	16.94	
26648	"	4/30	"	209.24	
26651	"	4/30	"	101.86	
26753	"	5/15	"	244.97	
26818	"	5/21	"	107.36	

(Testimony of Glen Fox.)

26797	“	5/27	“	68.82	
26819	“	5/27	“	88.11	801#
26795	“	5/27	“	32.84	
27049	“	6/3	“	111.54	
27050	“	6/9	“	123.75	
27051	“	6/12	“	162.47	
27064	“	6/30	“	90.86	826#
27054	“	6/26	“	73.26	
27485	“	8/27	“	129.58	

The above classification applies to the invoice that we have received from Crawford Doherty Foundry this year 1942. Items on their invoice that do not come under these the above classification, are identified by pacific prices as per letter Crawford Doherty Foundry under date April 13, 1942.

TUERCK MacKENZIE COMPANY
WILLIAM J. MacKENZIE,
Sec. Treas.

PLAINTIFF'S EXHIBIT No. 6

I, William J. MacKenzie, Manager of the Tuerck-MacKenzie Company, located at 687 N.E. Thompson Street, Portland, Oregon, do hereby certify to the Office of Price Administration, an agency of the United States Government, that Crawford & Doherty Foundry Company of 4606 S.E. 17th Avenue on June 26, 1942, billed the Tuerck-MacKenzie Company castings for cores at the rate of 12½ cents a pound; that on March 31, 1942 and previous dates, they billed these same cores for 10¼ cents a pound. That on June 26, 1942, they billed pallets, under

(Testimony of Glen Fox.)

12 inches, at 11 cents a pound; that on March 31, 1942, and prior thereto, they billed the same pallets at 10 cents a pound.

That on June 30th they billed B.E. bases and bells at 11 cents a pound and on March 31, 1942 they billed similar bells at 9¼ cents a pound. I further state that on April 13, 1942, Crawford & Doherty wrote us making quotations which were higher than those in effect on March 1, 1942, and have billed orders received by them after April 13, 1942 at the prices quoted in their letter of that date, and have not reduced their prices since the declaration of a price ceiling.

In many of the articles manufactured by Tuerck-MacKenzie Company, the castings which we have been buying from Crawford & Doherty for several years constitute the major part of the cost of the finished article, and it will be impossible to buy them at the increased price from Crawford & Doherty unless we are allowed to make similar raises in our ceiling prices. On other articles on which the cost of labor is a larger factor than the cost of castings, the effect of a raise in the price of the castings would not be so drastic, but on certain articles which we are furnishing to contractors who are doing work for the Army and Navy, our ceiling prices must be raised or the manufacturing of these articles must be discontinued if Crawford & Doherty are permitted to raise their prices to us.

I have read the above statement and believe it

(Testimony of Glen Fox.)

to be true and accurate to the best of my knowledge and belief and I have made the above statement freely and willingly.

Dated this 20 day of July, 1942.

Witness

JOHN C. FAIRLING,
Signed WILLIAM J. MacKENZIE.

PLAINTIFF'S EXHIBIT No. 7

AFFIDAVIT

United States of America

District of Oregon—ss.

I, William J. MacKenzie, being first duly sworn depose and say as follows:

That I am Secretary and Treasurer of Tuerck-MacKenzie Co., located at 687 N. Thompson St., Portland, Oregon, and that as Secretary and Treasurer of the above company, I have full access to, and am thoroughly familiar with, the bookkeeping system and general office methods used by Tuerck-MacKenzie Co.; that as Secretary and Treasurer of the above company I am charged with management of the office which includes the issuing of Purchase Orders, the accounting and the final payment of all accounts. I am thoroughly familiar with each and every item that the Tuerck-Mackenzie Co. buys from the Crawford & Doherty Foundry Co. I also

(Testimony of Glen Fox.)

know exactly to what use we put every item we buy from Crawford & Doherty Foundry Co.

According to our records and the correspondence we have received from Crawford & Doherty Foundry Co., also from the invoices in our files which we have received from them, I find that during the period from August 1, 1941 to February 1, 1942, and also during the entire month of March, 1942, the highest prices charged and paid for by us for castings from Crawford & Doherty Foundry Co. are as follows:

General "E" Meehanite Castings .....	.0925 per lb.
Cores and all other "B" Meehanite Castings.....	.1025 "
Bend Jackets .....	.15 "
Bell End Pallets up to 12" .....	.10 "
Bell End Pallets over 12" .....	.11 "
Culvert Pallets up to 12" .....	.11 "
Culvert Pallets over 12" .....	.12 "
Irrigation Pallets up to 12" .....	.12 "
Irrigation Pallets over 12" .....	.13 "

On April 14, 1942 we received a letter from the Crawford & Doherty Foundry Co. which stated as follows:

"April 13, 1942

Tuerck-MacKenzie Co.
687 N. Thompson St.
Portland, Oregon

Gentlemen:

Effective April 14, 1942, all previously quoted prices on castings are hereby cancelled and the following schedule substituted therefor.

(Testimony of Glen Fox.)

General "E" Meehanite castings.....	.11	per lb.
Cores and all other "B" Meehanite Castings.....	.125	"
Bend Jackets .....	.17	"
Bell End Pallets up to 12" .....	.11	"
Bell End Pallets over 12" .....	.12	"
Culvert Pallets up to 12" .....	.12	"
Culvert Pallets over 12" .....	.13	"
Irrigation Pallets up to 12" .....	.13	"
Irrigation Pallets over 12" .....	.14	"

Castings weighing under one pound each will be billed as one pound castings.

We shall do our utmost to furnish your requirements as in the past and are endeavoring to give you all the service we can under present conditions.

Thanking you for the past business and hoping we may serve you in the future, we are,

Very truly yours,

CRAWFORD-DOHERTY
FOUNDRY CO.

By V. O. STIRNWEIS,
Pres."

VOS/maa

The schedule of prices which became effective April 14, 1742 has carried through and has been the same up until the present time.

WILLIAM J. MacKENZIE.

Subscribed and sworn to before me this 6th day of February, 1943.

[Seal]

J. L. DAVIS,

Notary Public for Oregon.

My commission expires Feb. 10, 1945.

(Testimony of Glen Fox.)

PLAINTIFF'S EXHIBIT NO. 11

Bingham Pump Company
General Offices and Factory
Southeast Seventh at Main Street
Portland, Oregon

Manufacturers of Centrifugal—Turbine—Propeller Hipress—Vacuum Pumps.

October 22, 1942

Office of Price Administration
1224 Bedell Building
Portland, Oregon

Gentlemen:

The undersigned, as Purchasing Agent, of the Bingham Pump Company, Manufacturers of Pumps at their factory located at 705 S. E. Main Street, Portland, Oregon, hereby certifies that the above Company have been Purchasing Gray Iron and Meehanite Castings from the Crawford & Doherty Foundry Company since 1935; and further certifies that the schedule of prices for Castings were raised approximately 12% on April 14, 1942 and have not since been reduced.

Yours very truly

BINGHAM PUMP COMPANY

C. B. AMOS

CBA:AMS

C. B. Amos

Purchasing Agent

(Testimony of Glen Fox.)

PLAINTIFF'S EXHIBIT NO. 12

I, C. B. Amos of Bingham Pump Company, Portland, Oregon hereby represent and state to Glen E. Fox, who is known to me as an investigator of the Office of Price Administration, as follows:

That I am the Purchasing Agent of the Bingham Pump Company of 705 S. E. Main Street, Portland, Oregon, and that as Purchasing Agent of the above Company I have full access to, and am thoroughly familiar with the bookkeeping system and general office methods used by the Bingham Pump Company; that as Purchasing Agent of the above Company, I am charged with originating requisitions and for placing them with the different suppliers that furnish the Bingham Pump Company with materials. I am thoroughly familiar with each and every item that the Bingham Pump Company buys from the Crawford & Doherty Foundry Company. In my position I am charged with the responsibility of seeing that all prices are checked against original purchase orders.

According to our records and the correspondence we have received from Crawford & Doherty Foundry Company, also from the invoices in our files which we have received from them, I find that during the period from August 1, 1941 to February 1, 1942, the highest prices charged and paid for by us for castings from Crawford & Doherty Foundry Company are as follows:

(Testimony of Glen Fox.)

5-14-41

CAST IRON CASTINGS

Crawford & Doherty

1# to 50#	.125		
51# to 100#	.11		Base Plates
101# to 400#	.1025	25# to 400#	.0675
401# to 600#	.0925	401# to 800#	.065
601# up	.085	801# up	.0625

Bowls, Vacuum Pumps, and other specially cored or intricate jobs are advanced approximately 15%.

For special metal specifications add to the above base prices as follows:

"D" Meehanite	1c per lb.
"B" Meehanite	2c per lb.
"A" Meehanite	3c per lb.

On April 14, 1942 we received notification of a general price advance from the Crawford & Doherty Foundry Company which stated as follows:

"Effective April 14, 1942, all previously quoted prices on castings are hereby cancelled and the following schedule substituted therefor":

4-14-42

CAST IRON CASTINGS

Crawford & Doherty

1# to 50#	.14		
51# to 100#	.125		Base Plates
101# to 400#	.12	25# to 400#	.0775
401# to 600#	.11	401# to 800#	.075
601# up	.10	801# up	.0725

Bowls, Vacuum Pumps, Impellers and all intricate or specially cored castings priced at per each.

(Testimony of Glen Fox.)

Castings weighing under one pound each billed as one pound castings.

“D” Meehanite 1c per lb.

“B” Meehanite 2c per lb.

“A” Meehanite 3c per lb.

The prices on castings from the Crawford & Doherty Foundry Company that were quoted us on May 14, 1941 carried through without any changes whatever until April 14, 1942. The schedule of prices which became effective April 14, 1942 has carried through and has been the same up until the present time with but few exceptions. At the present time Crawford & Doherty Foundry Company is not accepting any business from on Standard items—CBA

us ^ and give as the reason that they are unable to make castings for us at the prices approved by the OPA. As of this date, we have not received the January invoices from Crawford & Doherty Foundry Company but have turned over to Glen E. Fox all of the invoices that we have received from Crawford & Doherty Foundry Company during the period from October 26, 1942 to January 1, 1943.

I, C. B. Amos, being first duly sworn, depose and say, that I have read the foregoing statement, that I know the contents thereof, and hereby make solemn oath that the same is true and correct; that I have freely and willingly given the foregoing statement and have no knowledge of any facts that

(Testimony of Glen Fox.)

alter, vary, or add thereto, with knowledge that said information may be used against me.

C. B. AMOS

(Signed)

Subscribed and sworn to before me this 1st day of Feb., 1943

GLEN E. FOX

Investigator, Office of Price
Administration

PLAINTIFF'S EXHIBIT No. 13

5-14-41

CAST IRON CASTINGS

Crawford & Doherty

1# to 50#	.125		
51# to 100#	.11		Base Plates
101# to 400#	.1025	25# to 400#	.0675
401# to 600#	.0925	401# to 800#	.065
601# up	.085	801# up	.0625

Bowls, Vacuum Pumps, and other specially cored or intricate jobs are advanced approximately 15%.

For special metal specifications add to the above base prices as follows:

"D" Meehanite	1c per lb.
"B" Meehanite	2c per lb.
"A" Meehanite	3c per lb.

4-14-42

CAST IRON CASTINGS

Crawford & Doherty

1# to 50#	.14		
51# to 100#	.125		Base Plates
101# to 400#	.12	25# to 400#	.0775
401# to 600#	.11	401# to 800#	.075
601# up	.10	801# up	.0725

(Testimony of Glen Fox.)

Bowls, Vacuum Pumps, Impellers and all intricate or specially cored castings priced at per each.

Castings weighing under one pound each billed as one pound castings.

"D" Meehanite	1c per lb.
"B" Meehanite	2c per lb.
"A" Meehanite	3c per lb.

PLAINTIFF'S EXHIBIT NO. 14

AFFIDAVIT

United States of America

District of Oregon—ss.

I, C. B. Amos, being first duly sworn depose and say as follows:

That I am the Purchasing Agent of the Bingham Pump Company of 705 S. E. Main Street, Portland, Oregon, and that as Purchasing Agent of the above Company I have full access to, and am thoroughly familiar with the bookkeeping system and general office methods used by the Bingham Pump Company; that as Purchasing Agent of the above Company I am charged with originating requisitions and for placing them with the different suppliers that furnish the Bingham Pump Company with materials. I am thoroughly familiar with each and every item that the Bingham Pump Company buys from the Crawford & Doherty Foundry Co. In my position I am charged with the responsibility of seeing that all prices are checked against original purchase orders.

(Testimony of Glen Fox.)

According to our records and the correspondence we have received from Crawford & Doherty Foundry Company, also from the invoices in our files which we have received from them, I find that during the period from August 1, 1941 to February 1, 1942, and also during the entire month of March 1942, the highest prices charged and paid for by us for castings from Crawford & Doherty Foundry Co. were quoted to us first on May 14, 1941 and were as follows:

5-14-41

CAST IRON CASTINGS

Crawford & Doherty

1# to 50#	.125		
51# to 100#	.11		Base Plates
101# to 400#	.1025	25# to 400#	.0675
401# to 600#	.0925	401# to 800#	.065
601# up	.085	801# up	.0625

Bowls, Vacuum Pumps, and other specially cored or intricate jobs are advanced approximately 15%.

For special metal specifications add to the above base prices as follows:

"D" Meehanite	1c per lb.
"B" Meehanite	2c per lb.
"A" Meehanite	3c per lb.

On April 14, 1942 we received notification of a general price advance from the Crawford & Doherty Foundry Co. as follows:

Effective April 14, 1942, all previously quoted

(Testimony of Glen Fox.)

prices on castings are hereby cancelled and the following schedule substituted therefor:

4-14-42

CAST IRON CASTINGS

Crawford & Doherty

1# to 50#	.14		
51# to 100#	.125		Base Plates
101# to 400#	.12	25# to 400#	.0775
401# to 600#	.11	401# to 800#	.075
601# up	.10	801# up	.0725

Bowls, Vacuum Pumps, Impellers and all intricate or specially cored castings priced at per each.

Castings weighing under one pound each billed as one pound castings.

"D" Meehanite	1c per lb.
"B" Meehanite	2c per lb.
"A" Meehanite	3c per lb.

The prices on castings from the Crawford & Doherty Foundry Co. that were quoted us on May 14, 1941 carried through without any changes whatever until April 14, 1942. The schedule of prices which became effective April 14, 1942 has carried through and has been the same up until the present time with but a few exceptions.

CLIFFORD B. AMOS

Subscribed and sworn to before me this 6th day of February, 1943.

(Seal) J. L. DAVIS

Notary Public for Oregon

My Commission Expires Feb. 10, 1945

(Testimony of Glen Fox.)

Mr. Wagner: You may cross-examine.

Mr. Henderson: No cross-examination.

Mr. Wagner: That is all, Mr. Fox.

(Witness excused)

W. B. PORTER

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wagner:

Q. You are Mr. W. B. Porter?

A. Yes, sir.

Q. Where do you reside, Mr. Porter? [56]

A. Oswego.

Q. What is your present occupation?

A. Sales Engineer for Premier Gear & Machine Works.

Q. Prior to that occupation were you employed by the Willamette Iron & Steel Corporation?

A. Yes, sir.

Q. In what capacity?

A. Contract, engineer.

Q. When did your employment with the Willamette Iron & Steel Corporation commence?

A. February 9, 1940.

Q. In February of 1940? A. Yes.

Q. And what was your position? What were your duties at the outset of your employment there?

(Testimony of W. B. Porter.)

A. Engineer.

Q. Engineer. Did you have access to or supervision, or custody, of any of the records of the Willamette Iron & Steel Corporation?

A. Not at the beginning of my employment.

Q. Are you acquainted with Crawford & Doherty Foundry Company? A. Yes, sir.

Q. And Mr. Card? A. Yes.

Q. Of that company? A. Yes. [57]

Q. And now in connection with the custody of records during any time in your employment with the Willamette Iron & Steel Corporation did you have custody and supervision over the records of purchases of castings from Crawford & Doherty Company? A. Yes.

Q. And when did that commence, Mr. Porter?

A. Approximately November, 1941.

Q. Referring to Plaintiff's Exhibit 22 for identification, Mr. Porter, can you tell us whether or not the records that those are photostatic copies of were records that were records in your custody and under your control during your employment with Willamette Iron & Steel Corporation?

A. That is right.

Q. They were? A. Yes.

Q. And what are those records?

A. These are copies of purchase orders.

Q. Is there any reference made in those purchase orders to a contract, including the escalator clause, Plaintiff's Exhibit 26?

A. Purchase Order 11,111 makes a reference——

(Testimony of W. B. Porter.)

Q. Makes a reference to what?

A. To the conditions and agreements pertaining to our order 10594.

Q. And what does that mean?

A. That refers to the purchase agreement which was attached to [58] that order—a copy of which is attached.

Q. Then the subsequent purchase order that makes the reference was a purchase order issued pursuant to the original purchase order of June 25th; is that right?

A. That is correct. It was issued on October 25th.

Q. What about the next purchase order contained in this Plaintiff's Exhibit 22 for identification? Does that make any reference to the original purchase order?

A. Yes; Purchase Order No. 17911.

The Court: Date?

A. Dated December 3rd, 1941.

Mr. Wagner: Q. And what reference does it include?

A. It makes reference to paragraph 5 of the purchase agreement, reference to inspection.

Q. All right. How about the next purchase order? What is the number of it, Mr. Porter?

A. 12,826.

Q. And what is the date of it?

A. Dated December 30th, 1941.

Q. What reference, if any, is included in that to the original order of June 25th? A. None.

(Testimony of W. B. Porter.)

Q. Is there another purchase order?

A. Yes.

Q. Give the number of the next one. [59]

A. Purchase Order 12,827, also dated December 30th, 1941.

Q. Any reference to that?

A. It makes no reference to the original purchase order.

Q. It makes none? A. That is correct.

Q. Now Mr. Porter, will you explain to the Court just how those purchase orders are originated and what the nature of the transaction is that they are evidence of.

A. During the period in which these purchase orders originated there was a change in the method of handling. At the beginning the purchase orders were originated under the supervision of Mr. C. M. Sigle by Mr. G. K. Murdoch, Mr. C. H. Pape or Mr. C. J. Hesse, depending on the particular product being purchased. These purchase orders were signed by Mr. Sigle and were mailed out, and the later——

Q. Where would they be mailed to, Mr. Porter?

A. To the Foundry.

Q. That would in this case be——

A. In this case it would be Crawford & Doherty.

Q. Crawford & Doherty?

A. At a later date, approximately November or December of 1941, when my duties included the handling of these castings, requests to purchase were originated by myself and these requests were

(Testimony of W. B. Porter.)

checked and were written up in the purchase order form and mailed to the Foundry. [60]

Q. Now when you say requests for purchase orders were originated by yourself, now just what does that mean, and what took place around or just preceding and just after the issuance of such requests?

A. In order to make that clear I will have to state the change of the procedure in the organization. As I say, prior to that time Mr. Sigle signed purchase orders. Subsequent to that time the purchasing department handled the actual writing of a purchase order. I merely indicated the source and prices available and indicated——

Q. When you say purchase prices available, what do you mean by that, and where were the prices—where did they originate that were indicated as being available?

A. Prices taken from previous orders or from my own conversations with the Foundry. This was written up on what we call a request to purchase. This request to purchase was forwarded through the various departments, the departments handling controlled material, the cost accounting, to see that the job was correct, through an assistant manager and to the purchase department, where the final purchase order was written and signed by the purchase agent.

Q. Now what I am more particularly trying to arrive at is how, in these particular situations, Mr.

(Testimony of W. B. Porter.)

Porter, referring to Exhibit 22 for identification, how the prices that were included in those orders originated. How did it come about that these orders were written up, including those prices as there stated? [61]

A. Purchase order 11,111 was originated by Mr. Pape and undoubtedly carried a price which he negotiated with the Crawford & Doherty Foundry Company. I have no personal knowledge of that. Purchase order 17,911 was originated by Mr. Hesse, with whom I was working at that time. That order was written just prior to his leaving the company and my taking over his duties.

Q. My understanding then, Mr. Porter, is that these prices originated in either one of two manners: either by direct contact, either by telephone conversation or by personal conversation with the members of the firm of Crawford & Doherty Company, or, on the other hand, were taken from a previous purchase order—from previous purchase orders? Am I right in that?

A. That is correct. In case it was taken from a previous purchase order it was our custom to phone the Foundry and ask if they would be willing to accept another order for certain quantities at previous prices.

Q. And was that done in these instances?

A. I can't say whether it was or not. Those were handled by Mr. Hesse and not by myself.

Mr. Wagner: Hand the witness Plaintiff's Exhibit 19 for identification.

(Testimony of W. B. Porter.)

Q. Will you identify that document, Mr. Porter. What is that document?

A. This document was prepared by representatives of the Office [62] of Price Administration?

The Court: What number?

The Witness: Exhibit No. 19, your Honor.

Mr. Wagner: This Exhibit 19, your Honor, is the affidavit of Mr. Porter.

The Witness: And the information contained in it was obtained from my records, and that was signed by myself.

Q. The information obtained in there was obtained from records under your custody and control, of the Willamette Iron & Steel Corporation?

A. That is correct.

Q. And the prices that are indicated there as being the highest prices during this particular period, namely, August 1st, 1941, and August 1st, 1942, then, are, in fact, the highest prices that those records reveal; is that right—those original records of the Willamette Iron & Steel Corporation?

The Court: Is that question limited to Crawford & Doherty transactions?

Mr. Wagner: It is limited to Crawford & Doherty transactions.

A. Yes. My records indicated these prices covered between August 1st, '42, and February 1st, '43.

The Court: No. You have the years wrong, don't you?

Mr. Wagner: Q. What were the years, Mr. Porter? I didn't understand. [63]

(Testimony of W. B. Porter.)

A. August 1st, '42, and February 1st, 1943, are the figures given here.

Mr. Wagner: May I see the exhibit, please.

The Witness: It may be that it was misdated and I didn't catch it.

(Paper passed to Mr. Wagner)

The Witness: My recollection is that it was probably intended to date that the year previous.

Mr. Wagner: Give it back to the witness.

Q. What you are indicating then, by that statement there, is, Mr. Porter, that deliveries at those prices were made during those dates, unless those dates are in error?

A. The deliveries were undoubtedly made at these prices during the first—during the receiving of castings indicated on those purchase orders that I have referred to before. The dates of receiving them I think were a year previous to the ones indicated here.

Q. Then the dates as indicated there are in error by one year?

A. I believe that is probably true. I wouldn't wish to make a positive statement without checking the records.

Q. Handing you Plaintiff's Exhibit 18 for identification I ask you to read that. By comparing that with the previous exhibit numbered 19 and refreshing your memory therefrom, could you say whether or not those dates are in error?

A. The dates shown on Exhibit No. 18 would

(Testimony of W. B. Porter.)

seem to indicate [64] that the date shown on Exhibit 19 is in error.

Mr. Wagner: At this time we will offer the Exhibits 22, 19 and 18 for identification—renew our offer.

Mr. Henderson: If the Court please, I see no purpose in arguing it. He is offering an exhibit which is admitted as wrong, 19. I can't see how it can have any probative value. He admits it is wrong. He seems to be offering an exhibit, after the witness has explained it is not correct, and then offering the exhibit. I don't see the probative value of it.

Mr. Wagner: The witness, your Honor, has testified that it is an apparent typographical error.

The Court: Well, it all seems to me to be purely technical, where a witness uses a document to refresh his recollection, whether the exhibit is put in the case or not. The testimony is the testimony of the witness and not statements in the exhibit, but there being no jury here, why, we will let them come in, with the understanding they are not offered as substantive proof. The testimony is the testimony of the witness, given on the witness stand. They are admitted on that basis.

(The affidavit of W. B. Porter so offered and received, having been previously marked for identification, was marked received as Plaintiff's Exhibit 19.)

(Testimony of W. B. Porter.)

PLAINTIFF'S EXHIBIT NO. 19

AFFIDAVIT

United States of America

District of Oregon—ss.

I, W. B. Porter, being first duly sworn depose and say as follows:

I am contract Engineer for the Willamette Iron and Steel Corporation. In this position I am charged with allocating requisitions for material. The purchase orders given to Crawford & Doherty Foundry Co. are originated by me and I have access to all of the records of the Willamette Iron and Steel Corporation relating to present and past purchases from Crawford & Doherty Foundry Co. According to these records the Willamette Iron and Steel Corporation gave Crawford & Doherty Foundry Co. their first contract for marine engine castings on June 25, 1941. This contract called for the following prices:

L. P. Piston Heads—at $7\frac{1}{2}c$

M. P. Cylinders—at $10\frac{1}{2}c$

Guide Brackets and Shaft Covers—8c

L. P. Piston Follower Rings—at $7\frac{1}{2}c$

H. P. Cylinder Liners—10c

H. P. Valve Liners—at 11c

Liners and Eccentric Straps and Crosshead Slippers—at 8c

L. P. Valve Bridals—at 7c

L. P. Stuffing Boxes—at $7\frac{1}{2}c$

(Testimony of W. B. Porter.)

The Crawford & Doherty Foundry Co. made deliveries to the Willamette Iron and Steel Corporation of the above castings at the above prices during the period from August 1, 1942 to February 1, 1943.

The above castings are marine engine castings.

W. B. PORTER

Subscribed and sworn to before me this 6th day of February, 1943.

(Seal)

J. L. DAVIS

Notary Public for Oregon

My Commisision Expires Feb. 10, 1945

Mr. Wagner: Mr. Henderson, is there any objection to the other two exhibits? [65]

Mr. Henderson: If I understood the Court correctly I have no objection. I understood him to say the testimony of the witness controlled.

Mr. Wagner: Very well.

(The affidavit of W. B. Porter, dated January 26th, 1943, so offered and received, having been previously marked for identification, was marked received as Plaintiff's Exhibit 18; and the photostatic copies of purchase orders of Willamette Iron & Steel Corporation so offered and received, having been previously marked for identification, were marked received as Plaintiff's Exhibit 22.)

(Testimony of W. B. Porter.)

PLAINTIFF'S EXHIBIT NO. 18

I, W. B. Porter, of Willamette Iron & Steel Corporation, hereby represent and state to Glenn E. Fox, who is known to me as an investigator of the Office of Price Administration, as follows:

I am a contract Engineer for the Willamette Iron and Steel Corporation, and in this position I am charged with allocating Requisitions for material. The Purchase Orders that are given to Crawford and Doherty Foundry Company are originated by me, and I have access to all the records pertaining to these purchases. According to our records the Willamette Iron & Steel Corporation gave Crawford & Doherty Foundry Company their first order for Marine Engines castings, June 25, 1941. This order called for the following:

L. P. Piston Heads—at $7\frac{1}{2}c$

M. P. Cylinders—at $10\frac{1}{2}c$

Guide Brackets and Shaft Covers—at $8c$

L. P. Piston Follower Rings—at $7\frac{1}{2}c$

H. P. Cylinder Liners—at $10c$

H. P. Valve Liners—at $11c$

Liners and Eccentric Straps and Crosshead Slippers—at $8c$

$7c$ —W.B.P.

L. P. Valve Bridals—at \wedge

L. P. Stuffing Boxes—at $7\frac{1}{2}c$

The Crawford and Doherty Foundry Company maintained the exact prices as they appear above

(Testimony of W. B. Porter.)

from June, 1941 until September 30th, 1942, at which time they rebilled us for all castings they had

March—WBP

shipped us from ^ 17th to September 30th, 1942.

This rebilling amounted to \$9,206.90 and was allo-

27872—WBP

cated and was billed to us on their invoice ^ This

by—WBP

invoice was paid ^ us on November 24th, 1942 with \$2,270.99 being covered by check #E-63 and \$6,935.91 was covered by check #21468. Both of these checks were dated November 24th, 1942. There were no advances in Crawford & Doherty prices from August 1941 until February 1, 1942, and the only advance in prices that we have had from the Crawford and Doherty Foundry were spoken of above as becoming effective March 17th, 1942.

I, W. B. Porter, being first duly sworn, depose and say, that I have read the foregoing statement, that I know the contents thereof, and hereby make solemn oath that the same is true and correct; that I have freely and willingly given the foregoing statement and have no knowledge of any facts that alter, vary, or add thereto, with knowledge that said information may be used against me.

W. B. PORTER

Signed

(Testimony of W. B. Porter.)

Subscribed and sworn to before me this 26 day
of January 1943

GLEN E. FOX

Investigator, Office of Price
Administration

JACK L. DAVIS

PLAINTIFF'S EXHIBIT No. 22
PURCHASE ORDER

WILLAMETTE IRON AND STEEL CORPORATION
2860 N. W. Front Avenue
Portland, Oregon

To Crawford & Doherty
Foundry Company,
4604 S. E. 17th Avenue,
Portland, Oregon

Purchasing Order No. 11111

To be shown on all Invoices, Ship-
ping Papers, Packages, Etc.

Date Oct. 25, 1941

Terms: F.O.B. C&D Foundry Deliver to: Machine Shop
Ship via..... Date Wanted..... Render Invoice in 3

Transportation Charge must be prepaid. If quoted F.O.B. Shipping Point,
Attach Original Paid Freight Bill to Invoice

Item	Quantity	Unit	Description	Unit Price	Amount
	20 Only	H.P.	Cylinders Drwg. 593202— Pattern E-24555 .....		.10½ per lb.

The above order subject to all conditions and agreements
appertaining to our order 10594—Jan. 25, 1941.

[In pencil] : (June)

For Company Use Only

Job Order No. 821-E

Department or Shop.....

WILLAMETTE IRON AND

Purpose for Which

STEEL CORPORATION

Ordered.....

By C. N. SIGLA

Originated by Pape

On Requisition No.....

For further information concerning this requisition,
contact Mr. G. K. Murdock

(Testimony of W. B. Porter.)

[Willamette Iron and Steel Corp. Purchasing Order Form]

To Crawford & Doherty

Purchase Order No. 17911

Foundry Company,

To be shown on all Invoices, Shipping Papers, Packages, etc.

4604 S. E. 17th Avenue

Portland, Oregon

Date 12-3 1941

Terms.....F.O.B. W.I.S.

Deliver to Mach Shop

Ship via..... Date Wanted: See letter Tender invoice in 5

Transportation Charges must be prepaid. If quoted F.O.B. Shipping Point,
Attach Original Paid Freight Bill to Invoice.

Item	Quantity	Unit	Description	Unit Price	Amount
------	----------	------	-------------	------------	--------

Castings and Patterns as per list:

252 Only Dwg. No. 8893-4

Patt. No. 24484 Eccentric Strap

21 Only Dwg. No. 18132-8

Patt. No. 24488 HP Valve Stem Guide
Bracket

21 Only Dwg. No. 18142-8

Patt. No. 24542 HP Valve Chest Cover

252 Only Dwg. No. 18143-8

Patt. No. 24505 Liner for Eccentric Strap

63 Only Dwg. No. 18184-8

Patt. No. 24585 Crosshead Slipper

21 Only Dwg. No. 18243-8

Patt. No. 24673 MP Indicator Gear
Sleeve

21 Only Dwg. No. 18244-8

Patt. No. 24674 HP Indicator Gear
Sleeve

21 Only Dwg. No. 18268-8

Patt. No. 24701 Driving Head

21 Only Dwg. No. 18294-8

Patt. 24728 Drain Valve Offset

Price .08 per lb.

Inspection: See Para. 5 of Purchase Agreement.

Delivery: See letter attached.

All material on this order is classified under A-1-b

Priority Form P-7 Copy No. 26.

For Company Use Only

WILLAMETTE IRON AND

Job Order No. 821-E

STEEL CORPORATION

Originated by Hesse

By C. L. BRAINERD

For further information concerning this requisition
contact Mr. E. B. Stiles

(Testimony of W. B. Porter.)

[Willamette Iron and Steel Corp. Purchasing Order Form]

To Crawford and Doherty

Purchase Order No. 12826

Company

To be shown on all Invoices, Shipping Papers, Packages, etc.

4604 S. E. 17th St.

City

Date 12/30/41

Terms.....F.O.B. Our Plant Deliver to Machine Shop

Ship via..... Date Wanted: As below Render Invoice in 5

Transportation Charges must be prepaid. If quoted F.O.B. Shipping Point,
Attach Original Paid Freight Bill to Invoice.

Item	Quantity	Unit	Description	Unit Price	Amount
------	----------	------	-------------	------------	--------

34 only L.P. Piston Bodies Dwg. 5929-2

Pattern #2451907½ per lb.

32 only L.P. Cylinder Covers Dwg. 8910-4

Pattern #e 24534..... .07½ per lb.

(1) casting only off each pattern shall be furnished with 15 days after receipt of patterns, thereafter (12) of each per month shall be delivered until the two orders are completed.

CONFIRMATION

All material on this order is classified under
A-1-b Priority Form P-7 Copy No. 101.

For Company Use Only

WILLAMETTE IRON AND

Job Order No. 821-E

STEEL CORPORATION

Originated by Hesse

By C. L. BRAINERD

For further information concerning this requisition
contact Mr. R. F. Spencer

(Testimony of W. B. Porter.)

[Willamette Iron and Steel Corp. Purchasing Order Form]

To Crawford and Doherty

Purchase Order No. 12827

Foundry Company

To be shown on all Invoices, Shipping Papers, Packages, etc.

4604 S. E. 17th St.

City

Date 12/30/41

Terms.....F.O.B. Our Plant Deliver to Machine Shop

Ship via..... Date Wanted: As below Render Invoice in 5

Transportation Charges must be prepaid. If quoted F.O.B. Shipping Point,
Attach Original Paid Freight Bill to Invoice.

Item	Quantity	Unit	Description	Unit Price	Amount
21 only	L.P. Piston Bodies Dwg. 5929-2				
	Pattern #E-24519 .....			.071½ per lb.	
21 only	L.P. Cylinder Covers Dwg. 8910-4				
	Pattern #3-24534 .....			.071½ per lb.	

These castings shall be furnished at the rate of
12 each per month consecutively to purchase
order No. 12826.

All material on this order is classified under
A-1-b Priority Form P-7 Copy No. 101.

Confirmation

For Company Use Only

WILLAMETTE IRON AND

Job Order 821-E

STEEL CORPORATION

Originated by Hesse

By C. L. BRAINERD

For further information concerning this requisition
contact Mr. R. F. Spencer

Q. Then referring now, Mr. Porter, to this affidavit, Plaintiff's Exhibit 19, according to the records of the Willamette Iron & Steel Corporation in connection with purchases from Crawford & Doherty Foundry Company during the period August 1st,

(Testimony of W. B. Porter.)

1941, to February 1st, 1942, low pressure piston heads were offered and delivered to Willamette Iron & Steel Corporation by the Crawford & Doherty Foundry Company at $7\frac{1}{2}$ cents per pound, as indicated on your statement here; is that correct?

A. May I look at the purchase order exhibit, please, this one over here? That is correct, $7\frac{1}{2}$ cents a pound.

Q. All right. Referring to your statement, Plaintiff's Exhibit 19 again, what is the next item and price at which sales were [66] made?

A. Medium pressure cylinders at $10\frac{1}{2}$ cents a pound. Guide brackets and shaft covers, 8 cents. Low pressure piston follower rings $7\frac{1}{2}$ cents. High pressure——

The Court: You don't need to put that detail in the record, do you?

Mr. Wagner: I was only trying to satisfy Mr. Henderson's objection to the effect that it was the witness' testimony and not the exhibit that was controlling.

The Court: Well, I don't want to interfere, if he wants it. I would not want you to put people on here to relate all these things that are in this bill of particulars. I want to get out of here today or tomorrow, in other words.

Mr. Wagner: These are in connection with ceiling prices, base period prices, which Mr. Henderson does not concede.

The Court: These go to the Willamette Iron & Steel?

(Testimony of W. B. Porter.)

Mr. Wagner: No—yes, these do, too, your Honor.

The Court: How many items are there?

Mr. Wagner: Not very many.

The Court: All right.

Mr. Wagner: Go right ahead.

The Witness: The items listed here, high pressure cylinder liners 10 cents; high pressure valve liners, 11 cents; liners and eccentric straps and crosshead slippers, 8 cents; low pressure valve bridles, 7 cents; low pressure stuffing boxes, [67] 7½ cents.

Q. Now referring again to Plaintiff's Exhibit 22, the photostats, will you indicate to us what the prices were for the items delivered during that period of time that are included on the photostats.

A. The prices indicated on the purchase orders are as shown on the Exhibit No. 19, but the purchase order does not necessarily indicate a delivery within a certain time period. It contains a request for delivery during that period.

Q. Now referring to Exhibit No. 19, is there anything that indicates to you that an examination had been made by yourself to see whether or not deliveries had been made at those prices you have been reading from there? A. Yes.

Q. Yes.

A. It would indicate that deliveries had been made during this period; not necessarily the complete amount shown on the purchase order.

(Testimony of W. B. Porter.)

Q. Are there any items included on the purchase orders, referring to Plaintiff's Exhibit 22, that are not covered by your statement, Plaintiff's Exhibit 19? A. Yes, there are other items.

Q. Will you read those and the prices.

A. It is a matter of checking them off.

Mr. Henderson: If the Court please, if I am responsible for [68] this in any way I want to absolve myself from it. I didn't intend to make any kind of an objection that would provoke counsel to ask the witness to interpret documents. They are supposed to speak for themselves. I just don't want to be responsible for it.

Mr. Wagner: Very well. If counsel is willing to accept that we will withdraw the question.

Q. Mr. Porter, what was the nature of these castings that were being furnished by the Crawford & Doherty Foundry Company? What were they being used for? And can you describe them, generally speaking?

A. They were parts for marine engines for Liberty Ships.

Q. Can you describe the castings to us? Were they large in size, or some large and some small?

A. They varied greatly in size. The medium pressure cylinder casting, if I remember correctly, weighed about 1600 pounds; drain valve offset possibly weighing four or five pounds.

Q. Were any of these castings—are you acquainted with Iron Fireman Manufacturing Company and their officers? A. Yes, sir.

(Testimony of W. B. Porter.)

Q. Are you acquainted with Mr. Bates?

A. Yes.

Q. During this period of time, Mr. Porter, were the Iron Fireman Manufacturing Company, to your knowledge, making the same kind of engines? [69]

A. The Iron Fireman Manufacturing Company industrial division entered into the manufacture of the same engine subsequent to the start of my activity in connection with this engine. I don't know——

Q. You don't know approximately when?

A. I don't know the date. I don't recall the date.

Q. Were these parts that the Willamette Iron & Steel were using and the Iron Fireman Manufacturing Company were using, interchangeable?

A. Yes.

Q. Were any interchanges made between your concern, the Willamette Iron & Steel Corporation, and the Iron Fireman Manufacturing Company, to your recollection?

A. They were later on in the program.

Q. Do you have an idea approximately what volume of these castings was being used by Willamette Iron & Steel Corporation during any given period, on an average?

A. I could not answer that question directly. The figures—the information available on the purchase orders here does not show.

Mr. Wagner: You may cross-examine.

Mr. Henderson: No cross-examination.

(Witness excused)

Mr. Wagner: Will you take the witness stand, please, [70] Mr. Bates.

HOWARD W. BATES

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wagner:

Q. Will you state your name, please.

A. Howard W. Bates.

Q. What is your occupation, Mr. Bates?

A. Plant Superintendent.

Q. Oh What?

A. Of Iron Fireman Manufacturing Company.

Q. And how long have you been so occupied?

A. Well, we organized that plant. I entered the employ up there February 15th, 1942. That is when we organized the plant.

Q. Are you familiar with their operations during the period August 1st, 1941, down to the present time?

A. Well, Iron Fireman has an engine plant. We were not in existence in 1941.

Q. You were not?

A. No. That plant was organized in 1942.

Q. About when in 1942, do you remember?

A. Well, February 15. Well, to be exact, I went up there to go to work February 14th, 1942. [71]

(Testimony of Howard W. Bates.)

Q. And that was the industrial plant, which is over here on——

A. Yes, that is the industrial plant on the West Side.

Q. On the West Side; the one that burned down?

A. Yes, that is right.

Q. I hand you Plaintiff's Exhibit 23 for identification, Mr. Bates. Is that statement signed by yourself?

A. Yes, sir.

Q. And have you, since being in the court room, read that and refreshed your memory from it?

A. Yes. I remember it pretty generally now.

Q. And can you describe briefly what the contents of this statement are? Tell us briefly about what they are.

A. Well, this refers largely to two purchase orders that we issued up there to the Crawford and Doherty Company, under our numbers 0041 and 0042, covering certain castings, cylinders, bridles, and other castings, three price segregations.

Q. Three price segregations?

A. Yes.

Q. And those are included in that statement?

A. They are, yes.

Q. What are the price segregations?

A. In detail, twelve cents for M. P. Cylinders, bridles \$8.00, or 8 cents per hundred weight, and other castings \$8.50 per hundred weight, or 8½ cents a pound. [72]

Q. Handing you Plaintiff's Exhibit 24 for identification, will you describe that document briefly for us.

(Testimony of Howard W. Bates.)

A. Well, this touches upon the same orders, the same order numbers, and it states the details of the negotiations, when they were started, at February 19th, and these orders were issued March 9th. On some of the orders that we got out there were some temporary orders written up. Now I don't remember whether these 0041 and 0042 were the final typewritten orders or whether they were some originally penciled orders. On some I remember that Crawford and Doherty—I don't know just how that was handled, but on some of the others I didn't have at the time I went up there any office staff, stenographers, or any other thing and I know some of the orders I wrote out in longhand. Whether these were in longhand or whether they were subsequent orders I don't know. That might even have been signed by Carl Hesse there; I don't know. He entered into the picture but I don't remember the dates.

Q. At any rate, those indicate the original orders Iron Fireman had issued for this particular type of castings; is that right? A. Yes.

Q. And to your knowledge you state as a fact that prior to the month or the date February 14th in 1942, no deliveries of this type of castings were made to the Iron Fireman Manufacturing Company?

A. No, no; there were no orders delivered.

Mr. Wagner: You may cross-examine. [73]

Mr. Henderson: May I see those exhibits?

(Testimony of Howard W. Bates.)

Mr. Wagner: Pardon me. We will offer the Exhibits now, your Honor—renew our offer.

The Court: They are admitted on the same basis as the other similar exhibits.

(The affidavit of H. W. Bates dated January 29, 1943, so offered and received, having been previously marked for identification, was marked received as Plaintiff's Exhibit 23; and the statement of H. W. Bates, dated October 16, 1942, so offered and received, having been previously marked for identification, was marked received as Plaintiff's Exhibit 24.)

PLAINTIFF'S EXHIBIT NO. 23

I, H. W. Bates of Iron Fireman Mfg. Co. hereby represent and state to Glen E. Fox and Jack L. Davis, who is known to me as an investigator of the Office of Price Administration, as follows: I am plant Supt. of the Iron Fireman Mfg. Co., 1870 S. W. Front Ave., Portland, Oregon. As Superintendent I am charged with originating buying orders, and all purchasing, & negotiating of Contracts are my responsibility. This plant has been operating since February 1942, and on February 19, 1942, we started negotiations for Marine Engine Casting with the Crawford-Doherty Foundry Co, and on March 9, 1942 we sent the Crawford-Doherty Co Contracts #10041 and #10042 Covering our requirements for marine engine Castings. The Prices on the Contracts were as follows: M. P. Cylinders, gears \$12.00 cwt. Bridles \$8.00 per cwt.

(Testimony of Howard W. Bates.)

All other Casting \$8.50 per cwt. According to our invoices from Crawford-Doherty Foundry Co., there have been no changes in prices since the first Contracts were made in March 1942.

Our Records disclose that we have paid the above prices for Castings, from Crawford Doherty Foundry Co., from March 27, 1942 (this is the first delivery date) up until the present time. Invoices from Crawford-Doherty Foundry Co. have been loaned to, Glen E. Fox, these invoices are dated Oct 26, 1942 until January 1, 1943. The above invoices have been returned to me as of this date, and I hereby acknowledge receipt of same.

I, H. W. Bates, being first duly sworn, depose and say, that I have read the foregoing statement, that I know the contents thereof, and hereby make solemn oath that the same is true and correct; that I have freely and willingly given the foregoing statement and have no knowledge of any facts that alter, vary, or add thereto, with knowledge that said information may be used against me.

H. W. BATES

Signed

Subscribed and sworn to before me this 29 day of January 1943.

GLEN E. FOX

& JACK L. DAVIS

Investigators, Office of Price
Administration

(Testimony of Howard W. Bates.)

PLAINTIFF'S EXHIBIT NO. 24

I, H. W. Bates of the Iron Fireman Mfg Co, located at 1870 S W Front Ave. do hereby certify to the Office of Price Administration, an agency of the United States Government, that I am plant Supt. and have full charge of all the purchasing and the stores departments, and in this position I am called upon to check all purchases and enter into Contracts with our Suppliers—On Feby 19, 1942 we started negotiations with the Crawford Doherty Foundry Co—and on March 9, 1942 we sent them Contracts #10042 and 10041—on these Contracts the prices quoted are M P Cylinders 12.00 per cwt. Bridles 8.00 per cwt & all other Castings 8.50 per cwt. The first delivery on these Contracts was made March 27, 1942. In checking all invoices subsequent to March 27, 1942 I find that on no shipment has the Crawford Doherty Foundry Co. advanced the prices over what was quoted on Contracts #10042 & 10041.

I have read the above statement and believe it to be true and accurate to the best of my knowledge and belief and I have made the above statement freely and willingly.

Dated this 16 day of October, 1942

Witness

GLEN E. FOX

H. W. BATES

Signed

(Testimony of Howard W. Bates.)

Mr. Henderson: No cross-examination.

(Witness excused)

Mr. Wagner: Call Mr. MacKenzie.

The Clerk: Will you state your name, please.

Mr. MacKenzie: William J. MacKenzie.

WILLIAM J. MacKENZIE

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wagner: [74]

Q. Mr. MacKenzie, what is your occupation?

A. I am the Manager of the Tuerck MacKenzie Company.

Q. And how long have you been so occupied, Mr. MacKenzie? A. Since 1918.

Q. What does Tuerck MacKenzie Company do?

A. A great bulk of our business is manufacture of concrete pipe and products machinery.

Q. Machinery? A. Yes.

Q. Do you make any pipe at all?

A. No concrete pipe, no.

Q. You make the machinery to make the pipe with? A. That is right.

Q. Does Tuerck MacKenzie Company do business with the Crawford and Doherty Foundry Company? A. Yes, for years.

(Testimony of William MacKenzie.)

Q. For about how long?

A. Somewhere back in the '20's, something over twenty years.

Q. Something over twenty years. And offhand approximately, if you can say, Mr. MacKenzie, what is the volume of business that Tuerck MacKenzie Company does with Crawford and Doherty Company on any given period of time, say for a month or per year?

A. Well, for some years they ran nearly \$50,000.00; then when times were bad, like in the '30's, I imagine it was down to just a few thousand dollars, because the volume was down. It would [75] run up and down, but somewhere between twenty-five to forty-five or fifty thousand dollars a year.

Q. That would be for years, say, 1939, '40 and '41?

A. Yes; that is fairly representative all along. I am not sure about '39 but '40, '41 and '42 our volume was pretty well up.

Q. How about '43 and '44?

A. They have held up about the same. That answer would apply pretty well to them.

Q. Now Mr. MacKenzie, can you describe to the Court just what these castings that are purchased from the Crawford & Doherty Company are like as to size and shape?

A. Well, they run all the way from little fine castings, weighing, oh, as low as a pound, and a

(Testimony of William MacKenzie.)

half apiece, up to, oh, pieces as high as 2200, 2500 pounds—the whole range.

Q. Now referring to the little castings, the pound castings, what would they be most apt to be used for?

A. Well, those were just small machine parts, and possibly for the manufacture of the equipment to make the smaller diameters of pipes. For instance, the castings to make a 3-inch pipe would be a great deal lighter and smaller than the castings possibly to make a 42-inch pipe or 48-inch pipe, and the same would be true of the pipe machine. The smaller pipe machine parts were smaller and lighter than the larger pipe machines.

Q. Could you give us an idea of what percentage of the total number of castings used in manufacturing these machines would [76] be in the one-pound type, or, on the other hand, in the larger type?

A. I don't think I could, because our arrangement through the years was different, because when we wanted different qualities of iron for different things, so the weight didn't altogether determine the pricing schedule that existed between us and Crawford & Doherty. It was for the use to which the casting was to be put that determined it.

Q. The use to which the casting was to be put that determined the price? A. Yes, sir.

Q. And did those prices fluctuate and change very much during all of this period of time?

A. Through the years?

(Testimony of William MacKenzie.)

Q. Yes; or did they remain pretty constant?

A. Not materially. We had a very satisfactory arrangement and as materials increased in price, or labor, we would be notified some time in advance as to a raise in the prices, and through all the years there wasn't any great fluctuation in prices, because they knew that we wanted to try to maintain, as much as possible, a constant price policy out to our customers and they worked with us a good deal on that basis. They weren't changing with every—prices didn't change with every small fluctuation in the price of scrap iron and coke, or anything like that.

Q. There were a number of changes—do you recall one during [77] the month of April, 1942?

A. Yes. There was a change some weeks after the price freeze.

Q. And in connection with that particular price change to your concern, Mr. MacKenzie, did your concern have occasion to make application to the Office of Price Administration for an increase of its price structure?

A. Yes. I went down and asked if we could pass on this increase and I was told that we couldn't. In fact, I was told that the Foundry couldn't make the increase.

Q. Do you remember about when that occurred?

A. Sometime I would say possibly within sixty or ninety days of when that April notice came, and the reason for that delay in there was that increase didn't affect the parts that were coming

(Testimony of William MacKenzie.)

through the Foundry at that time. The orders that were in the Foundry came through at the old price and there was a matter of sixty or ninety days delivery in there.

Mr. Wagner: You may cross-examine.

Mr. Henderson: No cross-examination.

(Witness excused)

Mr. Wagner: Mr. Amos. May I ask, your Honor, the Clerk whether there are any of the exhibits now that haven't been received in evidence? My recollection is they are all in now.

The Clerk: Were 23 and 24 received while I was out?

Mr. Wagner: Yes. [78]

The Clerk: Then they are all in.

CLIFFORD B. AMOS

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wagner:

Q. You are Mr. Clifford B. Amos?

A. I am.

Q. What is your occupation, Mr. Amos?

A. Purchasing agent.

Q. For whom?

A. Bingham Pump Company.

(Testimony of Clifford B. Amos.)

Q. And where is the Bingham Pump Company located?

A. 705 Southeast Main Street, Portland.

Q. And how long have you been so employed, Mr. Amos?

A. In my present capacity?

Q. Yes.

A. Since 1933.

Q. What is your present capacity?

A. Purchasing agent.

Q. Are you acquainted with Crawford and Doherty Foundry Company?

A. Yes, sir.

Q. Mr. Card and Mr. Stirnweis?

A. Yes.

[79]

Q. Crawford and Doherty Foundry Company supply castings to the Bingham Pump Company; is that right?

A. They do.

Q. For how long have they been so supplying castings?

A. Since I believe 1935.

Q. Since 1935. You tell us, Mr. Amos, approximately what the volume of business is that has been carried on in that period of time between the two companies?

A. Yearly?

Q. Anything—monthly, yearly, or semi-annually, or just approximately what you can say about that.

A. Well, it was very small, of course, to begin with. Whatever I would say would be a guess at the present time. It possibly ranges between two and five thousand dollars per month.

Q. Between two and five thousand dollars a month?

A. That is a guess.

Q. And would you say that that prevailed during the period 1941, '42 and '43?

A. I would.

(Testimony of Clifford B. Amos.)

Q. What does the Bingham Pump Company do?

A. Manufactures pumps.

Q. Manufactures pumps. And you use the castings obtained from Crawford and Doherty Foundry Company in the manufacture of these pumps, do you? [80]

A. We do.

Q. Can you explain to us, Mr. Amos, just what the nature of these castings is? Describe them to us as to shape, weight, size.

A. Oh, they vary in weight from half a pound to—we have had castings as high as 7,000 pounds.

Q. 7,000 pounds. What would be the average or the larger volume of the castings?

A. Well, of the larger volume?

Q. Yes. What size would they range?

A. Of course that depends upon the nature of our business at the time, but possibly the larger volume is in a class between 100 and 400 pounds.

Q. 100 to 400 pounds?

A. Something like that.

Q. Does Bingham Pump manufacture all types of pumps, high pressure and low pressure.

A. Well, they manufacture most types of industrial pumping equipment.

Q. And you do it on order, do you?

A. Yes, sir.

Q. Does Crawford and Doherty Company supply all of your castings for all of your pumps?

A. At the present time, no, sir.

Q. At the present time they are not?

A. No, sir. [81]

(Testimony of Clifford B. Amos.)

Q. Did you during 1941 and '42?

A. They never supplied all of our castings.

Q. They never have. They have only been one of your suppliers?

A. That is true.

Q. Do you recall, Mr. Amos, of the fact that during April, 1942, the Crawford and Doherty Foundry Company raised its prices to you?

A. Yes, sir.

Q. And were those raised prices maintained throughout any extensive period?

A. Yes. As far as I can recall they are still in effect.

Q. Still in effect. Have there been any further raises, subsequent ones?

A. I am not sure, but I believe not.

Mr. Wagner: You may cross-examine.

Mr. Henderson: No cross-examination.

(Witness excused.)

Mr. Wagner: Now there is one other matter at issue, your Honor; it has been raised as an affirmative defense; and that is the——

The Court: Do you want to keep those men back there?

Mr. Wagner: No, we are through with them now. Thank you very much for coming in, gentlemen. [82]

It is the third affirmative defense and it raises the question of the authority of the attorneys to institute this action in this particular case—and I

would like to be sworn, if counsel wishes to put me on proof of this—Mr. McTernan, who was then the Regional Attorney in San Francisco of the Office of Price Administration, expressly, while here in Portland, directed the institution of this action. Now in that manner there is a differentiation between this and previous cases. Other than that the situation is the same. The same general order of delegation to him controls there, as far as the question of the delegation of authority is concerned, pertaining to this case.

Now if counsel desires to put me on proof of that I will be very glad to be sworn. If not, if counsel desires to stipulate that is the fact, why, that is the fact.

Mr. Henderson: Well, I think your statement is a little bit broad to expect me to stipulate to it. You are suggesting that I enter into a stipulation as to some things that amount to conclusions.

The Court: It is a matter of defense. You don't need to carry it any further, unless you want to. It has been pleaded as a defense. It is a matter of defense.

Mr. Wagner: Well, it is a matter of defense, as far as Mr. Henderson is concerned.

The Court: Well, is your case finished? [83]

Mr. Wagner: That is the only other issue in the case, your Honor. Yes, as far as our case is concerned.

The Court: That is an issue made in defense.

Mr. Wagner: Yes.

The Court: You rest, I believe?

Mr. Wagner: That is right, your Honor.

The Court: Go ahead, Mr. Henderson and Mr. Randall.

Mr. Henderson: If it please the Court, at this time I ask for a dismissal of this case, upon the grounds that the plaintiff has shown no right to the relief asked for, either on the facts or the law.

Now to elaborate that just a little bit, the first point is there has been no showing here, factual showing, as to what the next month's prices for gray iron castings was during the month of March, 1942, nor during the period from August 1st, 1941, to February 1st, 1942. There was a showing as to what prices, maximum prices, were charged to particular firms during those particular times, but there is no showing on the part of the Government that there were not higher prices charged to some one else.

They had alleged in their complaint, and the law requires them to allege and to show that we have violated the Maximum Price schedule.

Now the first one, the one that refers to the period, the month of March, reads: [84]

"No person shall sell or deliver any commodity, and no person shall sell or supply any services, at a price higher than the maximum price permitted by this Regulation". And "Except as otherwise provided in this Regulation, the seller's maximum price for any commodity or service shall be: In those cases in which the seller dealt in the same or similar commodities or services, during March, 1942;

“The highest price charged by the seller during such month——

“For the same commodity or service.”

There is an explanation that says, “No seller shall change his customary allowances, discounts or other price differentials unless such change results in a lower price.”

Then: “The ‘highest price charged’ shall be a price charged during March, 1942, to a purchaser of the same class.”

A purchaser of the same class is defined: “‘Purchaser of the same class’ refers to the practice adopted by the seller in setting different prices for commodities or services for sales to different purchasers or kinds of purchasers (for example”——this is what they mean——“(for example, manufacturer, wholesaler, jobber, retailer, government agency, public institution, individual customer)”——those are the examples——“or for purchasers located in different areas or for different quantities or grades or under different conditions of sale”. [85]

Now for the period of time: Under 244 it says, “On and after October 26, 1942, regardless of any contract, agreement, lease, or other obligation, no person shall sell or deliver gray iron castings, and no person shall buy or receive gray iron castings in the course of trade or business, at prices higher than the maximum price set forth in Appendix A hereof.”

Appendix A reads: “Maximum prices for gray iron castings. Castings substantially the same as

those which the seller sold or offered for sale at any time during the period from August 1, 1944, to February 1, 1942, inclusive. The maximum price for each such casting shall be the highest net price (after adjustment for all applicable customary charges, discounts, quantity differentials and other allowances in effect for the seller between August 1, 1941, and February 1, 1942) at which the seller sold or offered for sale such castings to a purchaser of the same class during the period from August 1, 1941, to February 1, 1942, inclusive.”

Now we are back to the purchaser of the same class, with the same definition:

“‘Purchaser of the same class’ refers to the practice adopted by the seller in setting different prices for gray iron castings during the period from August 1, 1941, to February 1, 1942, for sales to different purchasers or kinds of purchasers (for example, wholesaler, jobber, retailer, government agency, public institution, individual consumer) [86] or for purchasers located in different areas or for different quantities or grades or under different conditions of sale.”

Now they have offered no proof whatsoever, and this is the matter that your Honor will recall I drew to the Court’s attention and to their attention at the pre-trial conference, which took place two weeks ago—they have not shown what was the highest price charged for castings within these definitions during these periods of time. They have shown that the highest prices to particular people were a certain amount but they have not shown yet, so

that the Court can say, so that the Court can make a finding, what the highest prices were for those particular periods.

Now the second point of this is, they have alleged, "In the judgment of the Administrator, the defendant has engaged in actions and practices which constitute a violation of Section 4(a) of the Emergency Price Control Act", and so forth, "in that the defendant has violated the General Maximum Price Regulation". Then that is repeated in the third cause of action.

Now we have denied that, putting upon them the burden of showing that this is true. The Administrator has to prove what is alleged, and he is the man bringing this action. Giving full force and effect to what counsel has said, although it is a statement and I would not ask him to swear to what he says, [87] giving full force and effect to what he said, it still does not answer the question that the Administrator has concluded these particular things and he is bringing this action. You have to assume merely because there are appended to the complaint the signatures of four people, without even a designation, in my complaint, as to who they are, without even purporting to show on the face of this. We know who they are, of course, but I am saying the pleading that is filed does not even purport to show on its face that these people who signed it were attorneys for the Office of Price Administration.

Now I don't intend to argue it but I am calling attention to the fact that they are asking for treble

damages. They are asking for the imposition of a penalty upon this defendant and we are entitled to have these things established to the Court, I should think, before we are required to offer any proof in this matter.

The Court: I will reserve decision, Mr. Henderson, on all points.

Mr. Wagner: If the Court please, I would like to correct one matter that Mr. Henderson included as a part of the Regulation. Appendix A of Maximum Price Regulation 244 provides:

“The maximum price for each such casting shall be the highest net price at which the seller sold or offered for sale such casting to a purchaser of the same class during the period from August 1, 1941, to February 1, 1942, inclusive”; adding, [88] “provided, that if the seller sold or offered for sale such casting during such period to a specified purchaser, he may not exceed the highest selling or offering price to such purchaser on sales or deliveries to such purchaser.”

I wanted to add the provision there, because I think it clarifies the point.

Mr. Henderson: I apologize to the Court for not reading that. That is in there. I didn't intend to mislead the Court on that. Mr. Stirnweis.

DEFENDANT'S EVIDENCE

V. O. STIRNWEIS

was thereupon produced as a witness in behalf of the defendant and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Henderson:

Q. Now will you please state your name.

A. V. O. Stirnweis.

Q. What is your business, Mr. Stirnweis?

A. Manager of Crawford & Doherty Foundry.

Q. And how long have you been associated with Crawford & Doherty? A. November, 1916.

Q. In what capacity did you go with them at that time? A. As co-owner.

Q. Co-owner? [89]

A. And secretary-treasurer.

Q. Mr. Stirnweis, how long have you been in the foundry business?

A. Since 1910. That is, in the business; not as an owner before 1916.

Q. You were working then? A. Yes.

Q. For whom?

A. Hesse-Martin Iron Works, from 1910 to '15.

Q. And since 1910 practically all the time you have been in this business? A. Yes.

Q. Has that been in the City of Portland all the time? You have been in the City of Portland all the time that you have been in the business?

A. Yes, sir, all the time.

(Testimony of V. O. Stirnweis.)

Q. And what is the nature of the castings manufactured by Crawford & Doherty at the present time?

A. Well, it is all, practically all light machinery castings, what we term light, medium and heavy machinery, gray iron castings and really termed Meehanite castings, which comes under that heading.

Q. What is Meehanite?

A. That is a process that has been developed in the last recent years. We have had it for seven years.

Q. It is a trade name for a particular type of metal; is that it? [90]

A. Yes.

Q. Different grades, are there, of Meehanite?

A. Yes.

Mr. Wagner: I am going to object to the questions. They are too leading. I think the witness ought to be doing the testifying.

Mr. Henderson: That is only preliminary. I will be glad to comply with that, though.

Q. How many different kinds of Meehanite are there, if there are different kinds?

A. Well, there are a half dozen grades of general engineering Meehanite, but there is no limit to special grades for services and purposes.

Q. Where is it manufactured?

A. Where is the metal manufactured?

Q. Yes. A. We have manufactured it.

Q. You mean you manufacture Meehanite itself?

(Testimony of V. O. Stirnweis.)

A. Yes. We don't buy any special metal. It is a process.

Q. It is a process? A. Yes.

Q. What size castings to you manufacture?

A. Well, the only limit on the size is the capacity of the crane.

Q. That at the present time is what? [91]

A. Three 20-ton cranes and miscellaneous others.

Q. What is the smallest casting you manufacture?

A. As small as you can find them in sand; I suppose maybe an ounce or two. Of course, that is a little bit extreme but we occasionally do.

Q. Real small? A. Yes.

Q. And, Mr. Stirnweis, what is the procedure that you follow in making the casting? What is brought to you first to determine what you are to manufacture? That is, how do you get your idea as to what you are going to manufacture?

A. Either the pattern, or drawings, or a sample casting.

Q. A sample casting. Blueprint drawing?

A. Or a pattern.

Q. Or a what? A. Or a pattern.

Q. Pattern? A. Ready for use, yes.

Q. And then when do you fix the price of your castings to your customer?

A. They are generally fixed before we accept the order. However, we have many accounts that do not ask for a price on the pattern casting.

(Testimony of V. O. Stirnweis.)

Q. Let me put it this way. You get a pattern or a blueprint, and when you get a pattern or a blueprint how do you determine [92] then the price of that casting? A. The price?

Q. Yes.

A. Well, we estimate the amount of metal and the amount of labor involved and base it on what the production per man hour is expected to be, less possible losses on account of different variables that enter into the making of the casting.

Q. What are the variables that enter into the making of castings?

A. Well, there are castings and castings, you know. For instance, you make cast iron brick or——

Q. Cast iron brick? A. Yes. .

Q. Just a solid square rectangular object?

A. Yes.

Q. That would be the smallest kind of a casting, wouldn't it?

A. Yes, sir. Or a high pressure multi-stage pump, which might involve 100 hours in labor against very few pounds of iron.

Q. What about the castings where there is a hollow part to it?

A. Well, as a rule, if it is enclosed with what is known as a water gadget, or something like that, it presents more hazards, and the more complicated the interior is in the general design of course the more hazards.

(Testimony of V. O. Stirnweis.)

Q. Now in fixing your price of castings to your various customers, do you take into consideration the same variables in arriving at the price? [93]

A. Yes; on the same general line of work we would. We would expect the same amount of defects, or foundry scrap on the average.

Q. The particular use to which the customer is going to put the article has nothing to do with it, as far as you are concerned, has it?

A. As far as price, no.

Q. And that was fixed entirely by what?

A. By the labor involved, and many times by the service requirements which we have to meet or else the blame is on us for not doing the job.

Q. Now there has been testimony here in respect to four different companies, Iron Fireman, Willamette Iron & Steel, Bingham Pump Company, and Tuerck MacKenzie. In fixing the prices for those castings sold to those companies, were they all arrived at in the same way by you? A. Yes.

Mr. Henderson: Now may I have Exhibits 3, 4 and 5, please, and 11 also, handed to the witness; and also 13, please.

Q. Mr. Stirnweis, that Exhibit 13 that you have there, the first one, it has been testified to as cards from files of the Bingham Pump Company and claimed to be a price list furnished by your company to Bingham Pump Company. Do you recognize that as such?

A. Yes. I am sure that is a copy of our—— [94]

(Testimony of V. O. Stirnweis.)

Q. Now the other letter, what is the number of that other one there? A. This one?

Q. No; the other one. A. Oh. 3.

Q. That is a letter covering prices to Tuerck MacKenzie; is that correct?

A. Yes; that is right.

Q. Mr. Stirnweis, those prices don't seem to be worded the same. They don't seem to be the same thing. The quotation isn't the same. What is the reason for that?

A. The quotation? You mean instead of——

Q. The way the prices are listed there.

A. Oh, instead of having from 1 to 50 pounds?

Q. Yes.

A. Well, it has been customary ever since we have done business with both of these people that they have a setup similar to that. They just get in the habit of buying their materials that way and they don't want to wave out of that. MacKenzie don't want to wave, whether he is buying a casting weighing 5 pounds or 500 pounds. He knows what the pound price is on the general run of the work. And Bingham is very much concerned about a casting being——

Q. Now Mr. Stirnweis, would it be possible for you to produce casting identical in all respects so it would be interchangeable [95] and give a price on it on those two different schedules that you have? That is, supposing Tuerck MacKenzie wanted a particular item and Bingham Pump Company wanted an identical item. A. Yes.

(Testimony of V. O. Stirnweis.)

Q. How would you arrive at the price? Would the price be the same on that list that you have there?

A. Well, understandg this: These prices are set up on their average requirements of their work. However, I don't quite understand how you mean.

Q. Well, Mr. Stirnweis, the fact that they are set up that way, would your price for the particular item ultimately be the same to Bingham Pump Company that it would to Teurck MacKenzie, if it was for the same identical item?

A. If it happened to fall in a certain range there as to weight. Otherwise it would be almost impossible, unless it was a separate job that didn't concern other business.

Q. Now then, these four people that have been mentioned, do you have a different way of arriving at or quoting the prices to them for their different items, just the same as you have a different way for Tuerck MacKenzie and Bingham Pump?

A. No, not particularly, except larger and heavier. What we call "Junkey" castings as a rule take a lower rate.

Q. Ultimately then do you have the same price for all of these different concerns, although the schedule is made up different?

A. Yes. I think over a period of time there would be a very, [96] very small fraction of a difference in the price of even these two customers per pound.

(Testimony of V. O. Stirnweis.)

Q. Put it this way: Is it your intention—was it your intention to charge both of these people the same for the amount of labor and the amount of metal used? A. Right. Sure.

Q. Is that also true of what you charged the Iron Fireman and Willamette Iron & Steel? Is that correct? A. Yes.

Q. Mr. Stirnweis, you remember you shake your head. The Court Reporter doesn't get that, so say either "Yes" or "No".

The Witness: Thank you.

Q. Now the labor that you use at your foundry, is that contracted for from month to month, or are you under a collective bargaining arrangement?

Mr. Wagner: We wish to object to the introduction of any evidence in this controversy pertaining to labor or costs, upon the ground and for the reason that the same is irrelevant; and on the further ground that the irrelevancy as to Crawford & Doherty's cost of labor to their pricing structure has already been determined by the Emergency Court of Appeals.

Mr. Henderson: If the Court please, if I am expected to answer that, counsel has misapprehended my intention for developing this line of inquiry. I am not trying to readjudicate in this Court the question that was litigated in the Emergency [97] Court of Appeals. I am trying to get at the price—what it was that fixed our price in January, we will say, of 1942, that is to February 1st, 1942. We are going to show all of our prices

(Testimony of V. O. Stirnweis.)

were fixed on that basis, and that there were certain schedules of prices furnished other concerns and any advances over those were based on the fact that our labor was about to be increased.

The Court: What is your defense going to be on the facts, Mr. Henderson:

Mr. Henderson: Our defense is going to be, your Honor, that insofar as castings were concerned the highest price charged to these particular persons is not the highest price that we got for castings during that period of time.

The Court: In March and——

Mr. Henderson: To February 1st, 1942.

The Court: What?

Mr. Henderson: To February 1st, 1942. I will go back that far.

The Court: Why do you go back that far?

Mr. Henderson: Because we have to under 244. Under Maximum Price Regulation 244 we have to go back to February 1st, 1942.

The Court: You have to go to August 1, '41.

Mr. Henderson: From August 1, '41, to February 1st, '42.

The Court: Yes.

Mr. Henderson: That is the highest price, I would say the highest up to December 31, then January, 1942, would be the price [98] that we could claim.

The Court: That is on sales made for October 26, 1942?

(Testimony of V. O. Stirnweis.)

Mr. Henderson: That is right, your Honor.

The Court: For sales made prior to that time your basis is March, 1942.

Mr. Henderson: Yes, your Honor.

The Court: And you are going to show that you charged higher prices than have been disclosed in the plaintiff's case?

Mr. Henderson: Yes, your Honor.

The Court: Well, go ahead.

Mr. Henderson: Mr. Reporter, what was the last thing.

The Court: He wanted to know about whether your labor was under your control or not.

A. Not very much.

Mr. Henderson: Q. What was your arrangement for labor, Mr. Stirnweis? A. Pardon?

Q. Did you have a collective bargaining agreement? A. Yes, we had.

Q. With whom?

A. The International Melters Union Local. However, it broke down. In fact, negotiations broke up and it was passed over to the National Board in '42 for settlement.

Q. Now let's go back to that. Let's take as of January, 1942. As of January, 1942, under what agreement were you working then? [99]

A. We were working under an annual agreement with them, terms and hours and dollars per hour.

(Testimony of V. O. Stirnweis.)

Q. That would expire when?

A. March 30th.

Q. March 30th?

A. 30th or 31st, rather.

Q. March 31 of 1942? A. Yes.

Q. At that time were negotiations under way for a new contract after March 31, 1942?

A. Yes, there was.

Q. How far had it progressed at that time?

A. Not very far. In fact, they never did get through and we knew we were going to have something and it went to the National Labor Board and there was finally an order handed down for us to pay retroactive wages to the first of April.

Q. Yes. Now do you have a comparative table of the prices as of January, 1942, and as of subsequent to the 31st day of March, 1942, or after the War Labor Board had issued its directive? Do you have that list? Do you have that table with you, Mr. Stirnweis?

A. I have some of the figures here. You mean that is on wages?

Q. Yes. Take the table that you have there and start as of January, 1942, what was your lowest class of labor.

A. This is prior to February?

Q. Prior to February 1st, 1942. [100]

A. Prior to February 1st, 1942, journeymen's rate 97-1/2 cents per hour.

Q. Now there was a War Directive issued in

(Testimony of V. O. Stirnweis.)

August, 1942, effective as of March 21st—April 1st, 1942. What was it? A. \$1.20.

Q. And what is the next item?

A. Melters and welders.

Q. As of before February 1st, 1942, what were they paid? A. 90 cents.

Q. And as of subsequent to March 31, 1942, how much? A. \$1.08.

Q. What is the next item?

A. Machine operators, which was eighty-five against \$1.07-1/2.

Q. Raised to what?

A. Dollar seven and a half.

Q. What is the next item?

A. Iron melters eighty-two and a half, raised to a dollar one-half cent.

Q. And the next one?

A. Sand blasters, from 75 to 98 cents.

Q. Finish the items.

A. Crane men 75, was raised to 93; shippers, grinders, burners, and kneading men from 70 to 88 cents; helpers and foundry laborers 62-1/2 to 80-1/2 cents. I think that is all there is.

Q. Now on a percentage basis—— [102]

Mr. Wagner: Just a minute, Mr. Henderson. I wish to renew the objection and move that all of the testimony of the witness in connection with the wages be stricken on the same ground.

The Court: It may stand.

Mr. Henderson: Q. What was the greatest percentage of increase, Mr. Stirnweis?

(Testimony of V. O. Stirnweis.)

A. Well, the greatest percent was on the smallest number of men, which was sand blasters, one or two men that were 30 percent.

Q. How much? A. 30 percent.

Q. And what was the lowest?

A. The lowest was 20 percent on melters.

Q. Then your wages were increased from 20 to 30 percent by the directive of the War Labor Board; is that correct?

A. Over what they were previous to February 1st, '42.

Q. Yes. Now in January, 1942, did you have occasion to quote prices for any other concern than those four that have been mentioned by the plaintiff in this case?

A. Well, to other concerns?

Q. To any other concern, yes.

A. Oh, yes. That is, during January, you mean, or——

Q. January, '42. A. Yes.

Q. Directing your attention particularly, did you have occasion to quote prices to Marine Electric? [102]

A. Yes, we did, on a program they had.

Q. And in relation to the prices that you had been getting for materials or castings sold to Bingham Pump Company, Tuerck MacKenzie, Willamette Iron & Steel, how did they compare? Put that in percentages, if you can. Let me put it this way: Were they increased or decreased?

(Testimony of V. O. Stirnweis.)

A. Well, they were increased over what they would have been the year before—six months before.

Q. How much?

A. Approximately at least 20 percent.

Q. At least 20 percent?

A. Because that was based on our anticipated overall increased cost in '42.

Q. Relating what you manufactured, or what you were asked to manufacture for Marine Electric, relating that to what you were manufacturing for these other concerns on the material and time basis, how much would it be increased over their prices as represented by the prices that had been quoted to them prior to that time.

A. Approximately 20 percent, I would say.

Q. During the month of January, 1942, did you deliver castings to Marine Electric?

A. Yes, we delivered castings to them every month I think.

Q. Were they generally of the same type of castings as those delivered to these other persons, or to these other concerns? [103]

Mr. Wagner: Just a minute. I think that calls for a conclusion of the witness, your Honor.

The Court: He may answer it. Who was the Marine Electric?

Mr. Henderson: Marine Electric, manufacturers of equipment.

The Court: Have him tell who they were.

(Testimony of V. O. Stirnweis.)

Mr. Henderson: Yes.

Q. Who were the Marine Electric Company?

A. The company has been in existence here for a long time. They do marine work, mostly electrical work. The last couple of years the program that concerned us was the building of steam engines and electric generators, sets for marine use.

The Court: Where are they located?

A. On Thurman Street.

The Court: And who are the principals?

A. Damon Trout is the head of the company. I don't know any of the other officers.

The Court: Did they go into a new line with the war? Is that the idea?

A. Yes, somewhat of a new line. It was new for them. They started in in '42.

The Court: And how far back had you sold them castings, or was this new business beginning in '42?

A. Oh, we sold them castings occasionally. However, they never were big users. We sold them probably for seven or eight years.

The Court: They became much larger users, did they? [104]

A. Yes, on account of getting into the manufacture of the machinery end, which under other conditions they might have bought. That is, they finished machines and done the work, and so forth, themselves.

The Court: That began early in '42?

A. Yes. I think January.

(Testimony of V. O. Stirnweis.)

The Court: And have they been continuous customers since? A. Yes.

The Court: And how do they compare in monthly or yearly volume with some of these others you spoke of, beginning in '42 to now? Somebody said here he bought \$50,000.00 a year from you, and somebody else said three or four thousand dollars a month.

A. I think Marine Electric would average \$3,000 a month for the last two years. It is a sizable account every month.

The Court: You want to break the afternoon here?

Mr. Henderson: Yes, please.

(Short recess.)

Mr. Wagner: If the Court please, during the recess in conversation with the Clerk in connection with the changes that were made by amendment this morning it came to my attention that one item, sales under 244 to Tuerck MacKenzie during the period January 1st, 1943, to March 10th, 1943, amounting to \$723.99 in alleged overcharges, have been omitted and I would like at this time to re-amend Paragraph V in the [105] complaint, and also the totals on page 26 of the bill of particulars, so as to include that omitted item, resulting in the total in the bill of particulars on page 26 of \$16,168.54, the same figure applying to paragraph V of plaintiffs third cause of action in the complaint and also to the prayer of the complaint.

(Testimony of V. O. Stirnweis.)

The Court: It may be done.

Mr. Henderson: Your Honor, is this an addition or a correction in addition, or what is it?

Mr. Wagner: It is just a correction in addition, Mr. Henderson. There are no corrections as the computations stand but in the recapitulation that one item was omitted.

Mr. Henderson: I will admit the ordinary rules of arithmetic apply. Two and two make four. You may cross examine.

Cross Examination

By Mr. Wagner:

Q. You, Mr. Stirnweis, have to do with the records that are kept by Crawford & Doherty Company?

A. Not to any great extent, other than what is termed mail orders, shop orders and the billing.

Q. Do you do the billing?

A. Yes, if I am around.

Q. Do you make quotations to customers, prospective customers? A. Yes. [106]

Q. As a matter of fact, Mr. Stirnweis, your duties have primarily to do with the operations of the foundry itself; isn't that right?

A. That is right.

Q. As superintendent of the foundry?

A. No. We have a general superintendent.

Q. You have a superintendent?

A. Who is directly over the operations.

Q. But your specific duties have primarily to

(Testimony of V. O. Stirnweis.)

do with the operations of the foundry, the making of the castings?

A. Well, some direction through me to the superintendents, but I have nothing to say in the foundry. That is, I don't go over the superintendent's head.

Q. Isn't it a fact that Mr. Card's duties are primarily those pertaining to the keeping of the company's records? A. That is right.

Q. And to the pricing structure of the various castings? A. Not to the pricing, no.

Q. To the quotations—to the quoting of prices?

A. No.

Q. To the billing?

A. Only as to keeping the records.

Q. Do you receive reports as to the company's earnings and costs of production? A. Sure.

[107]

Q. Gross sales? A. Yes.

Q. Such things as that? A. Yes; right.

Q. Do you also receive reports of various matters of litigation that the company is involved in, such as findings of the War Labor Board and their determinations in connection with labor hearings?

A. Yes.

Q. Do you have to do with the review of that? Do you have some voice in saying as to whether or not those findings or those determinations should be appealed from, or otherwise tested in courts?

A. I have a voice, yes. However, I should qual-

(Testimony of V. O. Stirnweis.)

fy that by stating, with some outside advice and probably some intercompany advice.

Q. What I am trying to arrive at is, that you and Mr. Card both have a say as to those matters?

A. Right.

Q. Are there any other officials of the company that have a voice in those determinations?

A. No, there is not.

Q. Now you mentioned the fact that by determination of the War Labor Board a certain increase in wages there was required; is that right? [108]

A. I didn't quite understand.

Q. I say, by virtue of a determination by the War Labor Board you were required to pay higher wages?

A. Yes.

Q. At a certain period of time?

A. We were ordered in August.

Q. And I also understood you to say that that had a direct effect on the methods of pricing that you employed?

A. Well, the anticipated overall costs, especially labor, early in '42.

Q. And as a result of that determination of yours the prices were raised then in April of 1942: is that right?

Mr. Henderson: Wait a minute. He didn't say April, '42.

Mr. Wagner: Q. Well, as a result of that you did raise your prices; isn't that true, Mr. Stirnweis?

A. No. It didn't result until August, '42, but

(Testimony of V. O. Stirnweis.)

the order came through to pay retroactive to April as to the increased labor rate, but everywhere else over the country practically they had asked for a raise that early in '42, got it, and we were asked for 25 cents an hour across the board early in '42. We knew they were going to get something.

Q. Then would you say, Mr. Stirnweis, that the fact that it became necessary for you to raise your wages had no bearing upon your price increases in April of 1942? A. Yes. We anticipated.

[109]

Q. You anticipated?

A. But we hadn't been ordered to pay it.

Q. You were not ordered until August of '42?

A. No.

Q. But you anticipated it in April of '42?

A. Yes; right.

Q. And that was the reason for your raising your prices in April of 1942; is that right?

A. The anticipation of the overall increase in August, especially labor, was the reason.

Q. Now did you also at the same time take into consideration the increase in your net earnings at that particular time?

A. Well, at that time our earnings were not very substantial.

Q. How did you arrive at that conclusion?

A. We arrived at it by computation of what our anticipated costs would be against what our prices had been, and we figured that our earnings would

(Testimony of V. O. Stirnweis.)

be nil, or practically so, if we did not advance the prices.

Q. Have you since determined that, as a matter of fact, your earnings were substantially increased instead of decreased?

A. Yes, they were.

Q. Was that in accord with the findings of the Emergency Court of Appeals and the Administrator in connection with your application for increases of prices?

Mr. Henderson: If the Court please, I don't want to keep [110] out anything that the Court thinks is pertinent to this matter, but I don't see the materiality of that.

Mr. Wagner: I think it is very material, if counsel only goes part way in the determination of the costs of production, that the Court know as a matter of fact the company's earnings were substantially increased, and that upon the basis of the fact that there should have been no price increase in April of 1942. That is, excluding the increased income by virtue of the raise in prices there was, as a matter of fact, as found by the Emergency Court of Appeals, an increase of earnings from 4 per cent during the period 1939 to '41, I believe, as against 12 per cent in the first half of 1943. I think that is the whole story—not only part of it.

The Court: Now just stay up while you are there. What I am interested in, I believe, is solely whether or not there was a higher price in March, 1942, than later charged in that year and prior to

(Testimony of V. O. Stirnweis.)

October 26th, 1942, and whether there was a higher price between August 1, '41, and February 1, '42, than was charged after October 26, 1942. That is what we are trying here, aren't we?

Mr. Wagner: Yes. But apparently of course the matter of good faith and practicable precautions against violations have also been pleaded and I assume that the defense is injecting this into it in support of that defense.

The Court: Mr. Henderson shakes his head. I will take [111] his word for it—it is his testimony—he is not offering it on that theory. So don't get me too far afield now. I am always interested to take little side trips, but on account of the lateness of the hour don't get me too far afield from what we are trying here. Mr. Henderson put this witness on and from what I heard in the pretrial I judge he is going to rely heavily on the fact that the Marine Electric, an account of about the same kind and volume and type of castings bought, was priced and paid more than these other three companies. That is pretty much his case. Now the witness testified 20 to 30 per cent more, and I assume that he is going to show some sales in March, 1942, which is one of the base dates, and then he had this witness testify a minute ago, rather the witness that testified that in February, '42, there were some sales made. I suppose that is going to be supplemented by some detail. I think those are the key points of this witness' testimony, and I have

(Testimony of V. O. Stirnweis.)

only felt interest in what he is saying about his labor as being a background for his charging Marine Electric more.

Mr. Henderson: That is right.

The Court: It being a new account for him.

Mr. Wagner: Nevertheless, the other defense is in the pleadings, your Honor.

The Court: All right.

Mr. Wagner: I wanted to make sure that was covered. [112]

The Court: All right. And if he defeats you on the main issue on the Marine Electric the other goes out the window as the tail with the kite, you see. If you want to, put your big guns on as to what this man testified to about the Marine Electric.

Mr. Wagner: I am getting to that, your Honor.

The Court: All right.

Mr. Wagner: Q. Now you testified also, Mr. Stirnweis, that prices were fixed before an order was accepted; is that right? A. Generally.

Q. Generally speaking. And that various elements went into the fixing of that price?

A. Right.

Q. Now in fixing those prices are certain documents and records made up, or kept, of quotations made upon the basis of certain figures, that certain figures were costs and the elements that were used in making up that price? A. Yes.

Q. And are those records maintained and kept by your concern?

A. Oh, yes and no. Some are not.

(Testimony of V. O. Stirnweis.)

Q. Some are not?

A. Some are not. However——

Q. Do you have any records of sales to the Marine Electric Company? A. Sales? Yes.

[113]

Q. And do you have some records as to quotations of prices to the Marine Electric Company?

A. Yes, we have.

Q. You have them here in court?

A. I believe they are.

Q. Now are you using those records in making the statement that your costs or your prices as to the Marine Electric were higher than the per pound cost as to the other customers that have been testified to?

A. They are higher than the per pound cost to the other customers based on their 1941 list.

Q. About how much volume was Marine Electric Company taking from you in 1941?

A. I haven't the exact figures.

Q. Do you have records that would indicate that? A. We have them in the office.

Q. Are those in court? A. No.

Q. They are not in court? A. No.

Q. Are they available?

A. They probably are. I think they are.

Mr. Wagner: I think that is all, Mr. Stirnweis. I wish at this time to move to strike all of the testimony of Mr. Stirnweis in connection with the Marine Electric transactions, [114] on the ground that

(Testimony of V. O. Stirnweis.)

it is not the best evidence, that the records of the company are the best evidence.

The Court: He is going to supplement it in detail. Aren't you going to show what he sold Marine Electric, and what he charged them, in some detail, and when?

Mr. Henderson: Well, now that your Honor has said that, yes. I hadn't anticipated that counsel was going to say a man who runs the business can't testify and that is not evidence. The best evidence, as far as what he is saying——

The Court: I am not interested in the record. For you to get up here and say that in March, 1942, he sold \$3000 to \$4000 worth of the same kind of stuff that went to these other companies, and for such and such a price, you ought to be pretty definite about it. You ought to have some records to refer to, instead of just leaving it 20 to 30 per cent, in percentages in general terms that way. But it is your case, Mr. Henderson.

Mr. Henderson: Well, yes. No; I appreciate, your Honor, the spirit in which you said that, because I want to——

The Court: You have got a point there. I would like for you to develop it.

Mr. Henderson: Yes. I want to make the best showing we can. There is no question about that. I just want to ask this witness one or two questions.

(Testimony of V. O. Stirnweis.)

Redirect Examination

By Mr. Henderson:

Q. Mr. Stirnweis, you did state that you sold to the Marine Electric in the month of March, 1942, some castings at this advanced price. Did you sell them subsequent to that in the month of February and in the month of March and on down to the present time? A. Every month.

Mr. Wagner: The same objection, your Honor. I don't think that the evidence is the best evidence. It is loose and is merely conclusions of the witness. I think if they have records of sales they should be called upon to bring them in. We tried to find them during the course of this investigation.

The Court: What do you mean by "we"? You tried to find them?

Mr. Wagner: We tried to find records of sales to Marine Electric Company that would raise the prices here that we have now set forth as their selling prices.

The Court: Did you have access to this company's books and records at any time?

Mr. Wagner: We were told that the Marine Electric Company sales were negligible at this period of time and during the course of the investigation also.

The Court: Did you have access to this defendant's books [116] and records at some time prior to this lawsuit?

Mr. Wagner: I believe we did, didn't we? (Mr. Wagner conversed with Mr. Fox in an undertone.)

(Testimony of V. O. Stirnweis.)

We were never refused access to them. I will say that.

The Court: Well, have you ever been into their books and records? You must know what I mean by that.

Mr. Wagner: I don't believe we have.

The Court: Have you, or your office investigator, ever been through their records?

Mr. Wagner: I don't believe we have ever been through their records.

The Court: Could this man tell you definitely whether you had or not?

Mr. Fox: Regardless—

The Court: Tell him and he will tell me.

Mr. Fox: We went through the sales records that they had. That was all.

The Court: Well, you say he was interested in the Marine Electric account. Did he go through that account?

Mr. Fox: I didn't see it.

Mr. Wagner: Your Honor, I am renewing the objection on that basis and, of course, would like to put our evidence on in rebuttal, too.

The Court: Oh, sure. You will have rebuttal. Go ahead now. [117]

Mr. Henderson: Mr. Reporter, will you read the question.

(The last question and answer were read.)

Mr. Henderson: Now just so that I may be correct—

The Court: I will tell you what I understood from him on direct. The Marine Electric expanded, like so many other industries, about the first of 1942, and it became a considerable purchaser for castings at the rate of \$3000 or \$4000 a month, and that has continued right down to the present time.

Mr. Henderson: Well, if that is understood, your Honor, that is all for Mr. Stirnweis.

(Witness excused.)

Mr. Henderson: If the Court please, I have thought we had the quotation we made to the Marine Electric in our file. I have just been informed by Mr. Card it is not here. Now I want to address myself strictly to what has been raised here that we want specific evidence to meet. I can put Mr. Card on for other matters now but I haven't that and I would like to approach that directly.

The Court: Put it on in the morning. That will carry us over until tomorrow then, I guess. Can you be here tomorrow a little while? Would you like to do something else with him tonight or would you rather break off?

Mr. Henderson: As far as I am concerned I would rather take this up at this point and break off at this time, if I [118] may do it.

The Court: All right.

Mr. Henderson: Thank you.

The Court: You might let counsel know what you expect to prove in the morning so he can prepare his rebuttal, if he has any. Are you going to bring in the Marine Electric account?

Mr. Henderson: Yes, your Honor.

The Court: Going back how far?

Mr. Henderson: Well, I am going to start with the quotation that we gave them in January.

The Court: '42?

Mr. Henderson: Yes.

The Court: Your deliveries were some months later, I suppose?

Mr. Henderson: Starting in that month.

The Court: Some deliveries in January?

Mr. Henderson: Yes.

The Court: And you expect then that to run through March, 1942, one of the base months, and that is your defense on the merits as to the earlier period, which ran to February 1, 1942, but you quoted and delivered in January, 1942, which is the earlier base period. What you sold in March, '42, takes care of the later?

Mr. Henderson: Yes. [119]

The Court: Oh, before you go tell me a little more about that proviso you corrected Mr. Henderson on. That is hardly the correct word—that you read after he started.

Mr. Wagner: Yes, your Honor.

The Court: Let us see what you claim for that.

Mr. Wagner: The Appendix A, providing for—

The Court: To what?

Mr. Wagner: To Maximum Price Regulation 244, section 1421.166 (1).

The Court: You won't need to read it again. My understanding of it was it supported your theory in this case, that you can hold a seller to his maximum to a particular customer?

Mr. Wagner: That is right, on a per customer basis. That is the ceiling—the August 1st, '41, to February 1st, '42, prices to Tuerck MacKenzie, the highest net prices during that period of time, governed as to his subsequent sales.

The Court: Now is that the account that is affected by that period, Tuerck MacKenzie?

Mr. Wagner: Yes.

The Court: The other two are not?

Mr. Wagner: Yes, they are. All of them, all four of the accounts are.

The Court: All four?

Mr. Wagner: Yes.

The Court: And how does it break in dollars between those [120] on your claim?

Mr. Wagner: Well, as to G. M. P. R., General Maximum Price Regulation, as to Tuerck MacKenzie amounts to fifteen hundred plus, and Bingham Pump Company amounts to a little over two thousand. That would be about \$3500.00. G.M.P.R. does not apply as to sales to Willamette Iron & Steel or the Iron Fireman.

The Court: So your point is that, even though Mr. Henderson were able to show in the morning that they charged the Marine Electric more in February, '42, —

Mr. Wagner: It would have no effect upon this company's prices on sales subsequent to October 26, 1943.

The Court: And in dollars, this \$3500, where does that fall? Your total claim now is sixteen thousand?

Mr. Wagner: \$16,168.54. The highest prices during March of '42 would affect the prices August 1st to October 26th in each of Tuerck MacKenzie and Bingham Pump Company's sales.

The Court: Let me ask my question this way: If Mr. Henderson made his point stick about the Marine Electric, would that throw \$3500 off of this \$16,000, or would it leave only \$3500 in your claim? Which way does that go?

Mr. Wagner: It would throw it off of the sixteen thousand. But let me explain just a little bit further, if the Court please. The Marine Electric had a higher price than is set forth during March of 1942 in the bill of particulars, then [121] that would reduce the \$16,168 by the \$3500, if it were determined that the Marine Electric Company were a purchaser of the same class.

The Court: I understand. That is all true.

Mr. Wagner: But as to the other sales General Maximum Price Regulation 244, as to all four of the concerns, I think the proviso governs and that each concern is governed by its base price; that is the highest net price charged during the base period to it as a customer, itself.

The Court: But Iron Fireman wasn't in business?

Mr. Wagner: Iron Fireman falls within the first classification of that same proviso under 244, namely, that the maximum price would be the highest net price at which the seller sold or offered for sale such casting to a purchaser of the same class during that period that just precedes the proviso.

Now Willamette Iron & Steel and Iron Fireman we say are purchasers of the same class.

The Court: Purchasers of the same class?

Mr. Wagner: Yes.

The Court: But if he also qualifies Marine Electric——

Mr. Wagner: As a purchaser of that class?

The Court: Yes—that would throw out Iron Fireman?

Mr. Wagner: Iron Fireman.

The Court: And Iron Fireman is about \$3400?

Mr. Wagner: \$3897. [122]

The Court: Then if he makes his point stick he would throw out \$3500 plus \$3800?

Mr. Wagner: That is right.

The Court: I am making you money pretty fast, Mr. Henderson.

Mr. Henderson: Thank you. I appreciate it.

The Court: It has a hole in the center of it so far, don't forget that. It is Chinese money so far. And that totals \$7300.

Mr. Henderson: I observe the string on it.

The Court: I suppose ten o'clock will be early enough these cold mornings.

Mr. Wagner: Thank you.

(Thereupon, at 4:11 o'clock P. M., an adjournment herein was taken until tomorrow, Wednesday, December 13, 1944, 10:00 o'clock A. M.) [123]

Wednesday, December 13, 1944, Court convened at 10:00 o'clock A. M., pursuant to adjournment,

and whereupon the following further proceedings were had herein:

V. O. STIRNWEIS

was thereupon recalled as a witness in behalf of the defendant and, having been previously sworn, further testified as follows:

Direct Examination

Mr. Henderson: May we have these two papers marked.

(The papers so offered were thereupon marked Defendant's Exhibits 27 and 28, respectively, for identification.)

Q. Mr. Stirnweis, yesterday when you were on the stand you stated that you gave a quotation to the Marine Electric Company in January, 1942. Do you now have the memoranda that you prepared at that time in your possession?

A. Yes.

Q. You are looking at the last sheet of a sheaf of papers that are marked Exhibit 27, are you not?

A. Yes.

Q. Now the paper that you are looking at is in pencil.

The Court: Is it Defendant's Exhibit?

Mr. Henderson: Yes, your Honor, Defendant's Exhibit 27.

A. Pencil memoranda.

(Testimony of V. O. Stirnweis.)

Q. Yes. The pencil memorandum was prepared by whom? [124]

A. By myself, taken from our files.

Q. And what does that memorandum represent, Mr. Stirnweis?

A. It is approximate quotation to the Marine Electric Company.

Q. What is the date at the top of it?

A. December 23rd, '41.

Q. That is when you said yesterday on the witness stand and I represented to the Court that that was in January?

A. Yes. The formal letter confirming this was written in January, dated January 31st.

Q. Yes. Then I assume you received a request from Marine Electric sometime before the 23rd of December in 1941?

A. Yes; roughly the same day or the day before.

Q. Do you know how that was transmitted to you; the date or the request for prices? Was it by telephone or by a written request?

A. The request was by telephone and I went over to their shop and inspected the blueprint of the article.

Q. You did it personally? A. Yes.

Q. Now then, what are the next papers attached to that exhibit, those white papers?

A. That is a list of the parts for small steam engine.

Q. Well, it is the parts they would require?

A. Yes.

(Testimony of V. O. Stirnweis.)

Q. Is that what you mean? [125]

A. Yes. It refers particularly to this same quotation.

Q. Now what is the first sheet of paper then, the next one?

A. That is our confirmation of price on the items.

Q. Well, that is a carbon copy of your letter, is it not? A. That is a carbon copy.

Q. I notice that there were some pencil notations on the bottom, a pencil notation on the bottom of that. Who prepared that? Who made that?

A. I made that.

Q. Was it yourself?

A. I made that. It was the identical price on the same articles that were quoted to another customer of ours.

Q. When you were testifying on the witness stand yesterday as to the prices that were quoted to the Marine Electric and the relation of those prices to Tuerck MacKenzie, Bingham Pump Company, Willamette Iron & Steel and Iron Fireman, were you referring to the data contained in Exhibit 27? Were you referring to the prices reflected by Exhibit 27? (Pause.) Mr. Stirnweis, do you understand? When you were stating yesterday, or making your statements in regard to Marine Electric and their prices, were you referring to the prices that are now set forth in Exhibit 27?

A. Yes.

Mr. Henderson: Yes. I will offer in evidence, if the Court please, Exhibit 27. [126]

(Testimony of V. O. Stirnweis.)

Mr. Wagner: Why, your Honor, I would like to make an objection: First, the exhibit is incompetent, irrelevant and immaterial. It does not indicate a delivered price. It does not have any bearing on the prices that are the subject of this controversy, and it is not a criterion for pricing or ascertaining the ceiling prices under either the General Maximum Price Regulation or Price Regulation 244.

The Court: You had better elaborate your objection. Explain your position.

Mr. Wagner: The General Maximum Price Regulation, your Honor, requires that a ceiling be determined by a delivered price. Reading from the particular provision 1499.2 of the G. M. P. R.—

The Court: Well, I will take your word for what it says. You don't need to read it.

Mr. Wagner: Likewise, Maximum Price Regulation 244 requires the pricing to be based on the highest net price on a per customer basis or per purchaser basis; that is, that the highest net price at which a casting was delivered during the period August 1st, 1941, to February 1st, 1942, to a particular or specified customer.

The Court: That is confined by its terms to per customer?

Mr. Wagner: That is right.

The Court: Let's come back to General M. P. R. Give me the exhibit we are talking about here. (The Clerk here passed paper to the Court.) [127]

It quotes here f.o.b. shop.

(Testimony of V. O. Stirnweis.)

Mr. Wagner: Well, that is not the point of the objection. The point of the objection is that the prices that are indicated there in that exhibit are not delivered prices; they are merely quoted prices or offered prices.

The Court: You mean he didn't execute this contract?

Mr. Wagner: That is right.

The Court: Well, did he or not? Did you sell during succeeding months to the Marine Electric, Mr. Stirnweis?

A. Yes.

The Court: On these quoted prices?

A. Yes.

Mr. Henderson: I asked him if all of his testimony yesterday was based on that. He said yes.

The Court: I understand. We always need to pick up facts one way or another. And their account ran three or four thousand dollars per month, I think you testified?

The Witness: I was estimating at that time. However, find they averaged somewhat less than that.

The Court: Well, how much?

A. Apparently very close to \$2000 a month average for the last two years.

The Court: All right. Now what is your position?

Mr. Wagner: Still the same, that the exhibit itself does not indicate anything more than a quoted or offering price as [128] of the particular date in



Part No.	Org. No.	Title	No. Req.	Material	Est'd Ngt.	Act. wt. w.	<i>San Jo. MEC</i> <i>Quote 12/14</i> <i>Lot of 100</i>	
1	D-11	Bed	1	M-B	550	637	54.00	60.00
2	X-104	Crankcase (lower-half)	1	M-D	345	387	41.40	45.00
3	C-7	Crankcase (upper-half)	1	M-D	285	270	34.20	35.00
4	X-105	Connecting Piece	1	M-B	50	93	9.30	10.00
5	C-8	Cylinder & Valve Chest	1	M-B	164	157	23.00	25.00
6	B-20	Piston	1	M-D	13-3/4	20	2.50	2.50
7	C-18	Cylinder Head	1	M-B	18 3/4	27	3.50	3.50
8	B-19	Valve	1	M-D	4 1/2	7	1.20	1.20
9	C-19	Valve Chest Head (upper)	1	M-B	7 1/4	13	1.50	1.50
10	C-19	Valve Chest Head (lower)	1	M-B	12	15	1.80	1.80
11	A-46	Valve Chest Liner	1	M-B		15	2.25	2.25
12	X-105	Stuffing Box Gland (upper connecting piece)	1	Cast Brass	2 5/8			
13	X-105	Stuffing Box Gland (lower connecting piece)	1	Cast Brass	2 5/8			
14	A-44	Stuffing Box Gland (Valve chest)	1	Cast Brass	2 5/8			
15	A-45	Valve Stem Guide	1	Cast Brass	2			
16	C-9	Oil Pump Base	1	Cast Brass	8 1/4			
17	C-11	Oil Pump Cylinder	1	Cast Brass	4 3/4			
18	A-43	Oil Pump Cap	2	Cast Brass	1 3/8			
19	C-16	Eccentric Yoke (lower-half)	1	Cast Brass	6 1/2			



Pre. No.	Title	No. Rec.	Material	wt. wgt.	Fals of 100 casted 1/31/4	Less than 100. wt + 5% =
C-17	Eccentric Yoke (upper-half)	1	Cast Brass	5-1/4		
C-14	Crank-shaft Bearing Cap (long)	1	M-D	18	2'	2.10
C-15	Crank-shaft Bearing Cap (short)	1	M-D	10	1/2	1.20
C-8	Crank-shaft Bearing (long-upper)	1	Bg. Bronze	4 3/4		2.20 Ea
C-9	Crank-shaft Bearing (long-lower)	1	Bg. Bronze	4 3/4		1.25 Ea
C-11	Crank-shaft Bearing (short-upper)	1	Bg. Bronze	3 1/4		
C-10	Crank-shaft Bearing (short-lower)	1	Bg. Bronze	3 1/4		
C-15	Cross-head Slipper	1	Cast Brass		X	
C-13	Cross-head Bearing (upper)	1	Bg. Bronze	1 3/8		
C-14	Cross-head Bearing (lower)	1	Bg. Bronze	1 3/8	X	
C-12	Crank-pin Bearing	2	Bg. Bronze	10		
C-17	Cross-head Guide Bars	2	M-B		2 = 9.55 ea = 2 1/2 1.10	65 Ea
C-21	Fly-wheel	1	M-D	300	not cast	25.00
C-10	Inspection Door	1	M-D	30	cast 27 20	3.00
C-12	Governor Adapter	1	M-D	25 lb	not cast	3.10
Total 210.15						
23 - Steam flange						5.5 - 75 Ea
Bolt Etc.						4.6 - 75 Ea

Approx Quotation 12/23/41
 Marine Elec Co

		Rough Est'd unit price	100 Act's Est'd Price in	900 Net = 10%
28 Cyl & Valve chest ^{157"} (includes Piston & D (includes 3 Heads)	B	200	30.00	
27 Crank case (upper half) ^{270"}	D	285	34.20	
104 " " lower ^{387"}	D	345	41.40	
105 Connecting piece (Cyl to Crank case)	B	50	6.00	
Mn 137g Caps (1 Long ^{21"} & 1 short ^{12"})	D	30	3.00	
Flywheel	D	300	35.00	
Inspect & or C 7 ^{20"} - part mtd	D	30	3.00	
Unit Base	B	550	49.50	

(Testimony of V. O. Stirnweis.)

Mr. Henderson: Q. Now Mr. Stirnweis, you have in your hand Exhibit 28? A. Yes.

Q. Just state generally what that is.

A. It is original purchase order from Iron Fireman Manufacturing Company covering several castings for Liberty engines, dated February 23rd, '42.

Q. Were those items delivered to the Iron Fireman on those prices? A. No. F.O.B. foundry.

Q. I beg pardon?

A. They are f.o.b. foundry.

Q. All your prices are f.o.b. foundry, aren't they?

A. With the exception of Federal agencies that insist on a delivered price.

Q. Yes. Well, I mean insofar as the—— [130]

A. The general practice.

Q. Yes.

A. It is understood it is f.o.b. foundry.

Q. F.o.b. foundry. Now then, did you prepare those items, and were they received by the Iron Fireman on the prices fixed in that purchase order?

A. You mean were the castings delivered?

Q. Yes. A. Yes.

Q. Now will you take the prices in that purchase order and relate them to the prices in Exhibit 28, which is the Marine Electric.

The Court: Exhibit 27.

Mr. Henderson: 27. Will you please hand that to the witness.

The Court: Compare 28 and 27.

A. The Iron Fireman price is less than Marine

(Testimony of V. O. Stirnweis.)

Electric. That is, per pound or per ton. Marine Electric were priced by each and Iron Fireman on the engine castings were quoted by the pound.

Mr. Henderson: Q. Well, supposing you had priced the Iron Fireman on the basis of the way you have——

Mr. Wagner: Objection to the question. I don't think in this particular situation a witness should be testifying as to suppositions, your Honor.

The Court: Well, let's hear the question. [131]

Mr. Henderson: Q. Supposing, Mr. Stirnweis, you had used the same price in the Marine Electric schedule on Exhibit 27 and applied that to the items contained in Exhibit 28, how would they compare as to price?

Mr. Wagner: I renew the objection.

The Court: He may answer. He has already answered. He said the Iron Fireman price was less than the Marine Electric.

Mr. Henderson: Q. What is the reason for the different manner of pricing these items in these two instances?

A. Basically it is production per man hour that is obtained.

Q. I mean, why do you submit a price schedule in a different way to Marine Electric than you did to Iron Fireman?

A. Oh, you mean by the each or by the pound?

Q. Yes.

A. Well, it seemed to be the custom in all the Liberty Ship engines to buy the castings by the

(Testimony of V. O. Stirnweis.)

pound and they insisted that quotatiton be made that way.

Q. Well, I mean the request for the quotation comes from the customer? A. Yes.

Mr. Henderson: Yes. You may cross examine.

Mr. Wagner: May I inquire, has the Iron Fireman exhibit been introduced?

Mr. Henderson: No. I want to introduce that exhibit.

The Court: 28? [132]

Mr. Henderson: 28.

Mr. Wagner: And I wish to object to its admission on the ground generally that it has no relevancy here as to this particular question.

Mr. Henderson: Counsel, for your information I think that is in accord with the exhibit you already have in evidence. It was intended for that purpose anyway. I will eliminate one item—let me have that, please.

Q. May I ask, Mr. Stirnweis, this order is dated February 23, 1942. The prices reflected by this Exhibit 28 to the Iron Fireman had been in force how long at that time, or was this an initial order?

A. That is one of the original orders from the engine plant.

Q. Now the prices on the schedule reflected by Exhibit 28, were they continued with the Iron Fireman then on through March?

A. Yes. These were quoted previous to the issuance of the order.

(Testimony of V. O. Stirnweis.)

Q. Yes. Do you remember how soon before February 23rd?

A. I am not too sure. I believe Mr. Card has the exact date. It was a verbal quotation.

Q. Were there any deliveries to Iron Fireman as early as January, 1942? A. January? No.

Q. When was the first delivery? [133]

A. I couldn't say. It was soon after this order.

Q. Yes.

Mr. Wagner: To lay a foundation for further ground of objection, your Honor, I would like to make a couple of inquiries. Mr. Stirnweis, the items in this Exhibit 28, purchase order of Iron Fireman——

Mr. Henderson: Counsel, is that February 28th or 23rd?

Mr. Wagner: February 23rd. Some of the items in here were used by the Crawford and Doherty Foundry Company to establish base prices for castings sold to Willamette Iron & Steel Corporation; is that not right? A. Yes.

Mr. Wagner: And those items are in all respects other and apart from the items that are included in the bill of particulars, in the transcripts and in the controversy that we are now having here? Is that not right, or do you know, Mr. Stirnweis?

A. Do you mean that they are the identical parts?

Mr. Wagner: No; that they are not; that they are in all respects other than those here in controversy?

(Testimony of V. O. Stirnweis.)

A. Most all of them are identical with the castings that were made for Willamette.

Mr. Wagner: Most what?

A. Most all of these items are identical with parts that were made for Willamette Iron & Steel. [134]

Mr. Wagner: Willamette Iron & Steel. And this exhibit is not being offered to establish any prices then under Maximum Price Regulation 244?

Mr. Henderson: It is offered to show the prices being charged Iron Fireman, comparable with the prices quoted to Marine Electric. That is the purpose of it.

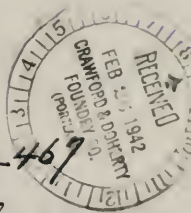
Mr. Wagner: I don't see that it has any relevancy at all, then, your Honor. They are different types of castings. They are quoted on a different basis, the Marine Electric quotations being on a per each or per casting basis, these being on a per pound basis. I don't see how any similarity of pricing can be established by the introduction of the exhibit.

The Court: It will be admitted subject to the objection.

(The purchase order of Iron Fireman Manufacturing Company so offered and received, having been previously marked for identification, was marked received as Defendant's Exhibit 28.)

PURCHASE ORDER

ORIGINAL



Delivery

2 units June 1st

3 units July 1st

4 units August 1st

2478 8 894

Temporary

Cancelling Reg # 2467

PAUL F. O'BRIEN

DATE Feb. 23

194

ADDRESS

PLEASE ENTER OUR ORDER FOR THE FOLLOWING:

SHIP TO *Industrial Personnel*

HOW SHIP

ADDRESS *1870 1st Street Astoria*

QUANTITY	DESCRIPTION	PRICE	UNIT
<i>(45 units)</i>			
45	H.P. G. Lumber Ciment - 18136-8	12 ⁰⁰	Cent
45	H.P. Valve ✓ 8905-4	✓	✓
45	H.P. Stuffing box ✓		
45	✓ ✓ Bushings } 18148-8	8 ⁵⁰	Cent
45	I.P. ✓ ✓ 18149-9	✓	✓
45	Seamless - Shaps 8893-4	✓	✓
45	H.P. Valve stem Buckets 18132-8	✓	✓
45	H.P. Valve Chest Cover 18142-8	✓	✓
45	Seamless for Seamless Shaps 18143-8	✓	✓
135	Crosshead Shippers 18184-8	✓	✓
45	I.P. Indicator Gas sleeves 18243-8	✓	✓
45	H.P. ✓ ✓ 18244-8	✓	✓
45	Blowing Bushings 18268-8	✓	✓
45	Quadrant Valve Flange 18294-8	✓	✓
45	L.P. Valve Mandrels 5938-2	8 ⁰⁰	✓
45	Wormhole Cover L.P. 8910-4	8 ⁵⁰	✓
45	Cover L.P. 8910-4	✓	✓
45	L.P. Piston Assembly 18282-8	✓	✓
45	L.P. ✓ Piston 5929-2	✓	✓
45	I.P. Piston Assembly 18121-8	✓	✓

IMPORTANT

PUT NUMBER OF THIS ORDER ON YOUR
INVOICE, PACKING LISTS AND PACKAGES.

PLEASE SEND

COPIES OF YOUR INVOICE

Plaintiff's Defendant's

EXHIBIT 28 *for Record*

A. W. PERSON

BY

Cn. No. 7124

Signature

PURCHASING AGENT

(Testimony of V. O. Stirnweis.)

Mr. Henderson: You may take the witness.

Cross Examination

By Mr. Wagner:

Q. You mentioned, Mr. Stirnweis, that this quotation given by Exhibit 27, Crawford and Doherty Foundry Company to Marine Electric Company, was identical with the prices given another customer and referred to a notation on the exhibit? [135]

A. A pencil notation at the bottom of the carbon copy.

Q. Were you referring to this notation, "February 6, 1942, quoted Tripp of Bamford Chase exactly same as above by phone"?

A. It was by phone.

Q. Is that the notation you were referring to when you made that statement?

A. Yes, the same as that statement.

Q. That was the quotation you made to Tripp of Bamford Chase subsequent to the time that this was worked up? A. Yes.

Q. Since this time, since the time of this January, 1942, quotation, have all of the sales of castings to the Marine Electric Company been on a per each basis? A. Yes, all of them.

Q. You never sold to Marine Electric on a per pound basis? A. No. No.

Mr. Wagner. That is all.

Mr. Henderson: That is all, Mr. Stirnweis.

(Witness excused.)

DEAN B. CARD

was thereupon produced as a witness in behalf of the defendant and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Henderson: [136]

Q. Your name is Dean B. Card? A. Yes.

Q. And what is your business?

A. Secretary-Treasurer of Crawford and Doherty Foundry Company.

Q. How long have you been with Crawford and Doherty Foundry Company?

A. Since December, 1927.

Q. How long have you been Secretary-Treasurer of the company? A. Since December, 1927.

Q. In a general way what are your duties?

A. Supervise the keeping of the records.

Q. Did you ever have any occasion yourself to quote prices? A. Not by myself.

Q. When did Crawford and Doherty first have any communications or negotiations with the Office of Price Administration? About when?

A. About July, 1942.

Q. And through what source? Through whom?

A. Through Mr. Lasley.

Q. Who is he?

A. He was the head of the Iron and Steel pricing office.

Q. Yes. Lasley is his name? A. Lasley.

Q. Whom did he communicate with in Crawford & Doherty? A. With me. [137]

(Testimony of Dean B. Card.)

Q. And what in regard to?

A. I called him to ask how we could properly increase the Willamette prices to the same basis as the Iron Fireman prices?

Q. Thereafter, from July 4th, were you in communication with the Office of Price Administration fairly regularly?

A. Not regularly. Several different times about the same matter.

Q. Did you have occasion to discuss with them prices, and the application of price rates to one customer and the other?

A. I can't quite hear that.

Q. Did you have occasion to discuss with the officers of the Office of Price Administration, local office, the fixing of your prices? A. Yes.

Q. Whom were your contacts with principally?

A. Later contacted Mrs. Cooper.

Q. And who else?

A. Mr. Fox, Mr. MacCormac Snow, Mr. McDannell Brown. There were several others. I don't recall their names.

Q. Yes. Did you take any action in respect to moneys due on invoices as to any of these companies after conferring with the Office of Price Administration? A. Yes.

Q. What did you do?

A. We divided the invoices of Willamette Iron & Steel at October [138] 26th, and as to those before October and those after October, and advised them to retain the amount that was in question.

(Testimony of Dean B. Card.)

Q. Did they retain the amount in question?

A. They did.

Q. How much?

A. Ninety-three hundred and some odd dollars.
I believe it is ninety-three hundred thirteen.

Q. Do you mean, Mr. Card, that they have in their possession at the present time ninety-three hundred and some dollars that is sought by the Government in this litigation? A. Yes.

Q. Did you request any other company to?

A. Yes.

Q. What other company?

A. Bingham Pump Company and Tuerck MacKenzie Company.

Q. How much does Bingham Pump Company have in its possession?

A. I believe it is \$5143.

Q. And how much does the Tuerck MacKenzie, the other one, how much does it have in its possession? A. They have \$1908.

Q. Do you know whether the Government knew of this fact before this suit was instituted?

A. Yes.

Q. How do you know that they knew of it?

A. Because they wrote letters to each of the three customers [139] stating the fact.

Q. Do you have copies of those letters?

A. I have them in my papers.

Q. Will you produce them, please?

A. They are in your file, or Mr. Randall's file.

(Testimony of Dean B. Card.)

Mr. Henderson: Do the Government Attorneys have in their possession the office or carbon copy of these letters?

Mr. Wagner: I imagine. I don't know what letter you are referring to, though.

Mr. Henderson: You know that your office wrote some letters in which they, on the 22nd day of July, 1942, before this suit was started, referred——

Mr. Wagner: There is a great deal of correspondence, Mr. Henderson.

Mr. Henderson: In which they referred to the amount of money that was being retained by them.

The Witness: I believe there is another folder, Mr. Randall.

Mr. Wagner: I do recall that a number of communications were carried on, Mr. Henderson, in connection with a settlement of this matter, and if that is the correspondence you are referring to——

Mr. Henderson: That is not.

Mr. Wagner: —it certainly is not relevant here.

Mr. Henderson: That is not.

Q. Where did you get these photostatic copies of these letters [140] you have, Mr. Card?

A. From the original letters.

Q. In whose possession?

A. I beg pardon?

Q. In whose possession are they?

A. I can't hear that.

Q. In whose possession are the original letters?

A. The customers'.

(Testimony of Dean B. Card.)

Mr. Henderson: Mr. Wagner, do you have a copy of a letter written July 22nd and signed by you as Enforcement Attorney, addressed to Willamette Iron & Steel?

Mr. Wagner: It will probably take me some time to find it, Mr. Henderson.

Mr. Henderson: Mark this, will you, please.

Mr. Wagner: Mark it?

Mr. Henderson: Yes, for an exhibit.

(The photostatic copy of letter dated July 22, 1943, F. E. Wagner, Enforcement Attorney, to Willamette Iron & Steel Corporation, so offered, was marked Defendant's Exhibit 29 for identification.)

Mr. Wagner: Are you making an offer at this time?

Mr. Henderson: If you will examine it I will pass it to the witness. I am just trying to save time. [141]

Mr. Wagner: Are you offering it?

Mr. Henderson: As soon as I have it identified, unless you are willing to admit you wrote such a letter.

Q. Now Mr. Card, refer to Defendant's Exhibit 29 and state in a general way what that is. What is it you have in your hand there?

A. A copy of the letter to Willamette Iron & Steel Corporation.

Q. You have seen the original of that letter?

A. Yes, sir.

(Testimony of Dean B. Card.)

Q. And who arranged for having a photostatic copy made? A. I did.

Q. And the photostatic copy was made by whom?

A. Swender Blue Print Company.

Q. Under your supervision?

A. I gave them the original to copy, yes.

Mr. Henderson: Yes. All right. I offer in evidence this Exhibit 29.

The Court: What does it say?

Mr. Wagner: I would like to ask a few questions before making my objection.

The Court: What does it say? Somebody tell me what it says.

Mr. Henderson: It says there are certain amount of money being withheld. They recognize that certain amounts of money are being withheld. It says, "We are informed that a total of \$9677.93 has been withheld by your firm on sales of gray [142] iron castings"—

The Court: Just tell me in a few words. What does he say to do with the money? What was the purpose of the letter?

Mr. Wagner: The purpose of the letter was a settlement of this controversy, and that was the reason for the letter, and the figures that are quoted in the letter were figures that were given me by Mr. Card.

The Court: Does the letter assume to tell them what to do with the money?

Mr. Wagner: No, it doesn't.

(Testimony of Dean B. Card.)

Mr. Henderson: The only purpose I am offering this letter for, if the Court please—it hasn't anything to do with what counsel is talking about. One of the things involved here, I suppose, is our good faith.

The Court: Yes. All right.

Mr. Henderson: Well, as showing that the Government, before it started this action, knew that we had done this.

The Court: What is the date that you stated a while ago?

Mr. Henderson: July 22, 1942.

The Court: No. This date he gave a while ago when he began to withhold. October what?

Mr. Henderson: October—right after October 26th.

The Court: October 26th, 1942?

Mr. Henderson: That is when 244 went into effect.

The Court: October 26, 1942? [143]

Mr. Henderson: 1942.

The Court: Take them to Mr. Wagner.

Mr. Wagner: I had just as soon make my objection now.

The Court: All right. State your objection. He wants to put in all three letters. There are three similar letters.

Mr. Wagner: All right.

The Court: You wrote the letter?

Mr. Wagner: That is right.

(Testimony of Dean B. Card.)

The Court: Those are photostatic copies of them?

Mr. Wagner: Yes. There is no question about that.

The Court: Now state your objection to all three of them. You don't need to identify them further.

Mr. Wagner: Very well.

The Court: Give them one exhibit number, Mr. Person.

Mr. Henderson: 29 is the first one.

Mr. Wagner: The objection to this Exhibit 29 is that the letter——

The Court: They are going to have one exhibit number. These three letters will be one exhibit.

Mr. Wagner: Yes, that is right. The letters are incompetent, irrelevant and immaterial to this controversy. The letters are also self-serving; that they were obtained from the Office of Price Administration pursuant to an agreement for a settlement of this controversy; that they are not the best evidence, in that the figures therein quoted were supplied to the [144] writer of the letters by Crawford & Doherty Foundry Company.

The Court: Pardon me. What is the date of the letters, Mr. Person?

The Reporter: July 22, 1943, July 20, 1943 and July 21, 1943.

The Court: Mr. Wagner, do I understand—my memory slipped along here last night about some of the testimony yesterday. This claim of the Gov-

(Testimony of Dean B. Card.)

ernment covers these sales made since October 26, 1942, for which these sums have been withheld?

Mr. Wagner: That is right, your Honor.

The Court: That is right?

Mr. Wagner: And a further ground of my objection to these letters is that the claim of the Government is based upon the prices at which the castings were delivered, and that the withholding or offsetting, or refunding, or repayment of any amounts on any of the accounts involved are immaterial to the position of the Government in making its claim.

The Court: This case was filed on July 31st, '43?

Mr. Wagner: That is right, sir.

The Court: All right. They are admitted, subject to the objection.

(The photostatic copy of letter dated July 22nd, 1943, F. E. Wagner, Enforcement Attorney, to Willamette Iron & Steel Corporation, so offered and received, having previously [145] been marked for identification, was marked received as Defendant's Exhibit 29; and, pursuant to the foregoing, a photostatic copy of letter dated July 20, 1943, F. E. Wagner, Enforcement Attorney, to Bingham Pump Company, and a photostatic copy of letter dated July 21, 1943, F. E. Wagner, Enforcement Attorney, to Tuerck MacKenzie Co., so offered and received, were attached to and made a part of Defendant's Exhibit 29.)

(Testimony of Dean B. Card.)

DEFENDANT'S EXHIBIT NO. 29

Office of Price Administration

Bedell Building

Portland, Oregon

July 22, 1943

Willamette Iron & Steel Corporation

3050 N. W. Front Avenue

Portland, Oregon

Attention: Mr. W. B. Porter

Gentlemen:

Subject: Charges in excess of ceiling
prices by Crawford & Doherty Foundry
Company on sales to you of grey
iron castings. Case No. 8410-00127

At the request of Mr. Card of Crawford & Doherty Foundry Company, we are herewith submitting an itemization recently taken from the foundry company's records indicating excessive charges made by it on sales to you of grey iron castings on transactions occurring during the period from October 26 to December 31, 1942.

(Testimony of Dean B. Card.)

Date	Inv. No.	Description	Ceiling	Chg.	Wt.	Total Amt. of Invoice	Overcharge
10/30/42	28046	M.P. Cyl.	101½	12	15,780	\$1,893.60	\$ 236.70
11/28/42	28177	M.P. Cyl.	101½	12	47,160	5,659.20	707.44
11/28/42	28231	Ecc. Strap	8	8½	57,980	4,928.30	289.90
11/28/42	28231	Slipper	8	8½	1,950	165.75	9.75
11/30/42	28244	L.P. Cyl.					
		Cover	7½	8½	7,100	641.75	75.50
11/30/42	28245	L.P. Cyl.					
		Cover	7½	8½	10,650	3,065.10	306.60
12/26/42	28428	M.P. Cyl.	101½	12	16,000	1,920.00	240.00
12/31/42	28511	M.P. Cyl.	101½	12	47,970	5,756.40	719.55
12/31/42	28530	L.P. Cyl.					
		Cover	7½	8½	103,830	8,825.55	1,038.30
Total.....							\$3,623.70

We are informed that a total of \$9,677.93 has been withheld by your firm on sales of grey iron castings to you by Crawford & Doherty Company most of which was so withheld for reason that overcharges were being made you. Deducting from this figure the above \$3,623.70 would leave a net balance due Crawford & Doherty from Willamette Iron and Steel Corporation in the sum of \$6,054.23.

The above sums indicated as being withheld by your firm, as well as the balance due, are subject to your confirmation which we would appreciate having at your early convenience.

Very truly yours,

F. E. WAGNER

Franz E. Wagner

Enforcement Attorney

(Testimony of Dean B. Card.)

Portland District Office

Office of Price Administration

Bedell Building

Portland, Oregon

In Reply Refer To: SPo:FEW(L)

July 20, 1943.

Bingham Pump Company

705 S. E. Main

Portland, Oregon

Re: Charges in excess of ceiling prices by
Crawford and Doherty Foundry Co.

Gentlemen:

We understand that you have been informed as to certain overcharges or charges in excess of ceiling prices on sales of grey iron castings to you by Crawford and Doherty Foundry Company, amounting, during the period of time between the first day of August, 1942, and the 10th day of March, 1943, to the sum of \$5,313.87. These are the result of the following: violations under General Maximum Price Regulation 8/1/42 to 10/26/42, \$2,038.73; violations under Maximum Price Regulation 244 during the period from 10/26/42 to 1/1/43, \$1,954.80; violations under Maximum Price Regulation 244 from 1/1/43 to 3/10/43, \$1,320.34.

We are likewise informed that your concern commenced withholding certain sums of money, for the reason that overcharges were being made, on November 5, 1942, covering deliveries made during September and October of that year. The result of these withholdings left net amounts of overcharges in the sum of \$1,126.05.

(Testimony of Dean B. Card.)

The total amount withheld by your concern from remittances due Crawford and Doherty, we are informed, amounts to \$5,143.98, of which the amount deducted to arrive at the above figure, namely, \$4,187.82, you are at the present time entitled to withhold. This leaves your net balance due to Crawford and Doherty in the sum of \$956.16.

The foregoing figures indicated as amounts withheld on your account with Crawford and Doherty Company are represented to us as being correct. However, we would appreciate your confirmation at your early convenience.

Very truly yours,

F. E. WAGNER

Franz E. Wagner

Enforcement Attorney.

Office of Price Administration

Bedell Building

Portland, Oregon

July 21, 1943

Tuerck Mackenzie Co.

687 N. Thompson Street

Portland, Oregon

Gentlemen:

Re: Charges in excess of ceiling prices by
Crawford & Doherty Foundry Com-
pany.

We understand that you have been informed for some time past concerning certain overcharges or

(Testimony of Dean B. Card.)

charges in excess of ceiling prices on the sales to you of grey iron castings by Crawford & Doherty Foundry Company amounting, during the period of time between the 1st day of August, 1942 and the 10th day of March, 1943, to the sum of \$3,333.95. These are the results of the following: violations under General Maximum Price Regulation from 8/1/42 to 10/26/42, \$1,540.55; violations under Maximum Price Regulation 244 during the period from 10/26/42 to 1/1/43, \$1,069.41; violations under Maximum Price Regulations 244 from 1/1/43 to 3/10/43, \$723.99.

It has been disclosed to us by Crawford & Doherty Foundry Company that commencing during the month of December, 1942 your firm commenced withholding certain sums of money from remittances from your account with Crawford & Doherty because of the fact that overcharges were being made.

The total amount withheld by your concern from remittance due Crawford & Doherty, we are advised, amounts to \$1,908.20 of which the amount deducted to arrive at the above figure of \$1,395.83 you, at the present time, are entitled to withhold. This leaves your net balance due Crawford & Doherty in the sum of \$512.37.

The foregoing figures indicated as amounts withheld on your account to the Crawford & Doherty Company are represented to us as being correct;

(Testimony of Dean B. Card.)

however, we would appreciate confirmation of these at your earliest convenience.

Very truly yours,

F. E. WAGNER

Franz E. Wagner

Enforcement Attorney

Mr. Henderson: Q. Mr. Card, have the moneys referred to in the letters and in the bill of particulars of the Government ever yet been received from these three customers? A. No.

Q. That is, these three customers now retain in their possession the money represented by these sums in the bill of particulars; is that correct?

A. Yes.

Mr. Henderson: Will you please have this marked.

(The tabulation headed "Crawford & Doherty Foundry Co. Comparative Price Schedule, was marked Defendant's Exhibit 30 for identification.) [146]

Q. Mr. Card, have you had occasion to compute the prices charged to Marine Electric Company on the basis of the prices charged to Bingham Pump Company and Tuerck MacKenzie and relate them one to the other? A. Yes.

Q. Did you prepare a compilation of that?

A. Yes, sir.

(Testimony of Dean B. Card.)

Q. Is that what you have in your hands, Defendants' Exhibit 30 for identification? A. Yes.

Q. Mr. Card, where did you get your basis for the prices being charged Tuerck MacKenzie and Bingham Pump Company?

A. From quotations, invoices, or from the price schedules that we used in pricing their order.

Q. What business were you in before you were Secretary-Treasurer of the company?

A. Certified Public Accountant.

Q. You are a Certified Public Accountant

A. Yes, sir.

Q. And do you know whether or not that paper that you have in your hands, Exhibit 30, accurately and correctly, from a mathematical standpoint, reflects these various prices? A. Yes, sir.

Mr. Henderson: I offer in evidence, if the Court please, Defendant's Exhibit 30. [147]

Mr. Wagner: The objection is on the ground of immateriality and irrelevancy generally. It indicates nothing that could be used within the broadest meaning of the terms and provisions of the regulations for establishing base prices. The exhibit reflects figures that are nothing more than conclusions, conjectures and opinions, and establishes nothing which indicates deliveries of any castings at any particular prices.

The Court: It is admitted. It is preliminary, I take it, to what is to follow now.

(The tabulation so offered and received,

(Testimony of Dean B. Card.)

having been previously marked for identification, was marked received as Defendant's Exhibit 30.)

DEFENDANTS' EXHIBIT No. 30

CRAWFORD & DOHERTY FOUNDRY CO.

COMPARATIVE PRICE SCHEDULE

Showing highest price charged for Gray Iron Castings in March 1942 compared with prices that would have been charged for the same or similar castings if priced according to price schedules covering Gray Iron Castings sold to Bingham Pump Co. and Tuerck-MacKenzie Co. after April 13, 1942.

Invoice Date 1942	Item	Weight Each	Price Each	Equivalent Price Per Pound	Price per lb. for same or similar Item if sold to	
					Bingham Pump- Co.	Tuerck- MacKen- zie Co.
As Sold in Mar. 1942 to Marine Electric Co.						
3/31	D5 Conn Box E	21#	\$ 4.00	19.1c	14c	11c
3/31	D15 Spider B	96#	15.00	15.6c	14½c	12½c
3/31	C22 Cyl & Chest B	164#	30.00	18.3c	14c	12½c
3/26	3" Christenson Box E	1¼#	.23	18.4c	14c	17c
3/31	D6 Conn Box E	15#	2.85	19c	14c	11c
3/31	B2 Clamp E	1#	.20	20c	14c	12c
3/31	B19 Valve D	6#	1.50	25c	15c	12c
3/31	A46 Liner B	14#	3.00	21.4c	16c	13c
3/31	C20 Door D	20#	3.00	15c	15c	13c
3/31	B24 Flange D	5#	.75	15c	15c	14c
3/31	D11 Bed Plate (or Base Plate)	600#	60.00	10c	9½c	none

Average Prices
on
Sales in March 1942
to
Marine Electric Co.
13.09c per lb.

Average Prices on Sales in Months of
July-Aug.-Sept.-Oct.-1942 when schedules
of April 13, 1942, were in full effect
Bingham
Pump Co.
13.08c per lb.

Tuerck-
MacKenzie Co.
12.24c per lb.

(Testimony of Dean B. Card.)

Mr. Wagner: I wish also, in addition to the objection, to use the same grounds of the objection for a motion to strike all of the testimony of the witness in connection with this exhibit.

The Court: The motion is denied.

Mr. Henderson: I would like to have this marked for identification, please.

(The eleven invoices of Crawford & Doherty Foundry Company to Marine Electric Company so offered were marked Defendant's Exhibit 31 for identification.) [148]

DEFENDANT'S EXHIBIT No. 31

Phone LANcaster 2185

CRAWFORD & DOHERTY FOUNDRY COMPANY

4604 S. E. 17th Avenue

Portland 2, Oregon

1/12/42

	Your Req. No. 9653
Sold To Marine Electric Co.	Our No. 25614
	Inv. No. 25988
Shipped To Same	Terms Net 10 Prox

1	c3	Cover	8.50
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This is to certify that the merchandise listed in this invoices has been produced in accordance with the Fair Labor Standards Act of 1938.
We are not responsible for loss or damage of pattern equipment by fire or otherwise. Storage will be charged on patterns left on our premises longer than six months after date of last order for castings therefrom.

[Crawford & Doherty Foundry Company Statement]

1/13/42

	Your Req. No. 9690
Sold To Marine Electric Co.	Our No. 25620
	Inv. No. 25989
Shipped To Same	Terms Net 10 Prox

1	C8	Cyl & Vale Chest "Normalize"	27 50
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(Testimony of Dean B. Card.)

[Crawford & Doherty Foundry Company Statement]

1/13/42

Sold To	Marine Electric Co.	Your Req. No. 9716
		Our No. 25620
		Inv. No. 25990
Shipped To	Same	Terms Net 10 Prox

1	C7	Crankcase	37.20
1	C7	Crankcase Door	3.00
1	C14	Cap	2.20
1	C15	Cap	1.10
			43.50

[Crawford & Doherty Foundry Company Statement]

1/13/42

Sold To	Marine Electric Co.	Your Req. No. 9763
		Our No. 25620
		Inv. No. 25991
Shipped To	Same	Terms Net 10 Prox

1	C14	Cap	2.20
1	C15	Cap	1.10
			3.30

[Crawford & Doherty Foundry Company Statement]

1/15/42

Sold To	Marine Electric Co.	Your Req. No. 9792
		Our No. 25640
		Inv. No. 26024
Shipped To	Same Called	Terms Net 10 Prox

2	#961 Cover Plate 3 x 5 x 3/16.....	1.00
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[Crawford & Doherty Foundry Company Statement]

1/19/42

Sold To	Marine Electric Co.	Your Req. No. 9760
		Our No. 25634
		Inv. No. 26042
Shipped To	Call	Terms Net 10 Prox

1	D5	Water tight box	}	7.25
1	D6	Water tight cover		
1	B2	Clamp		

(Testimony of Dean B. Card.)

[Crawford & Doherty Foundry Company Statement]

1/22/42

Sold To	Marine Electric Co.	Your Req. No. 60
		Our No. 25655
		Inv. No. 26043
Shipped To	Call	Terms Net 10 Prox

1	X105 Conn Pc	10.00
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[Crawford & Doherty Foundry Company Statement]

1/27/42

Sold To	Marine Electric Co.	Your Req. No. 116
		Our No. 25691
		Inv. No. 26083
Shipped To	Call	Terms Net 10 Prox

3	Small Face Plate	4.50
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[Crawford & Doherty Foundry Company Statement]

1/27/42

Sold To	Marine Electric Co.	Your Req. No. 122
		Our No. 25691
		Inv. No. 26083A
Shipped To	Call	Terms Net 10 Prox

2	B17	Gib $1\frac{3}{4}$ x $9\frac{3}{4}$ x $11\frac{1}{2}$	1.50
1	C18	Cyl Head $9\frac{3}{4}$ dia	3.25
1	B20	Piston $6\frac{1}{4}$ dia $2\frac{3}{4}$ o/a $\frac{7}{8}$ core.....	2.50
			7.25

(Testimony of Dean B. Card.)

[Crawford & Doherty Foundry Company Statement]

1/27/42

Sold To	Marine Electric Co.	Your Req. No. 108
		Our No. 25686
		Inv. No. 26084
Shipped To	Call	Terms Net 10 Prox

1	C19	Valve Chest Head Upper	2.00
1	C19	Valve Chest Head Lower.....	2.00
1	A46	Liner	2.00
1	B19	Valve Core	1.50
			7.50

[Crawford & Doherty Foundry Company Statement]

1/28/42

Sold To	Marine Electric Co.	Your Req. No. 63
		Our No. 25669
		Inv. No. 26085
Shipped To	Call	Terms Net 10 Prox

1	B11	Engine Base	60.00
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Mr. Henderson: And mark these also, please.

(The seven copies of invoices of Crawford & Doherty Foundry Company to Marine Electric Company so offered were marked Defendant's Exhibit 32 for identification.)

(Testimony of Dean B. Card.)

DEFENDANT'S EXHIBIT No. 32

Phone LANcaster 2185

CRAWFORD & DOHERTY FOUNDRY COMPANY

4604 S. E. 17th Avenue

Portland 2, Oregon

3/21/42

Sold To Marine Electric Co.

Your Req. No. 1201

Our No. 0092

Inv. No. 26386

Shipped To Call

Terms Net 10 Prox

25	B29	Piston	3.00 ea	75.00
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This is to certify that the merchandise listed in this invoice has been produced in accordance with the Fair Labor Standards Act of 1938.

We are not responsible for loss or damage of pattern equipment by fire or otherwise. Storage will be charged on patterns left on our premises longer than six months after date of last order for castings therefrom.

[Crawford & Doherty Foundry Company Statement]

3/26/42

Sold To Marine Electric Co.

Your Req. No. 860

Our No. 0074

Inv. No. 26387

Shipped To Call

Terms Net 10 Prox

L 60	3" Christenson Box.....	.23 ea	13.80
	(1.25 lb. each) E	[.181 in pencil]	

[Crawford & Doherty Foundry Company Statement]

3/31/42

Sold To Marine Electric Co.

Your Req. No. 403

Our No. 25744

Inv. No. 26403

Shipped To Call

Terms Net 10 Prox

A 8	D11	Bed Plate (600 lb. each).....	60.00 ea	480.00
L 3	X104	Crank Case Lower	45.50 ea	136.50
L 6	C7	Crank Case Upper	37.20 ea	223.20
L 2	C8	Cyl. & Valve Chest (160#ea.)	27.50 ea	55.00
A 17	B17	Crosshead Guide Bar .....	.65 ea	11.05
H 5	B21	Flywheel	26.25 ea	131.25

1037.00

(Testimony of Dean B. Card.)

[Crawford & Doherty Foundry Company Statement]

3/31/42

		Your Req. No. 940	
Sold To Marine Electric Co.		Our No. 0051	
		Inv. No. 26404	
Shipped To Call		Terms Net 10 Prox	
A 2	D11	Bed Plate	60.00 ea 120.00
L 3	X104	Crank Case	45.50 ea 136.50
L 1	C7	Crank Case	37.20 ea 37.20
A 17	D17	Connector Piece	11.00 ea 187.00
L 22	C22	Cyl. & Valve Chest (164# ea.) B	30.00 ea 660.00
H 20	B29	Piston	3.00 ea 60.00
H 25 ?	C23	Cyl. Head	4.00 ea 100.00
L 11	B19	Valve	1.50 ea 16.50
A 20	C19	Upper Valve Chest Head.....	2.00 ea 40.00
A 20	C19	Lower Valve Chest Head.....	2.00 ea 40.00
L 7	A46	Liner	3.00 ea 21.00
H 24	C14	Cap long	2.20 ea 52.80
A 24	C15	Cap short	1.25 ea 30.00
A 41	B17	Crosshead Guide Bar .....	.65 ea 26.65
H 23	B21	Flywheel	26.25 ea 603.75
A 25	C20	Inspect. Door	3.00 ea 75.00
A 7	D12	Gov. Adapter	3.25 ea 22.75
H 20	B24	Exh. Flange .....	.75 ea 15.00
			2244.15

(Testimony of Dean B. Card.)

[Crawford & Doherty Foundry Company Statement]

3/31/42

Sold To	Marine Electric Co.	Your Req. No. 940
		Our No. 0052
		Inv. No. 26405
Shipped To	Call	Terms Net 10 Prox

BA 25	D15	Spider (96 lbs. each).....	15.00 ea	375.00
A 25	D3	Brush Spider	2.10 ea	52.50
A 5	D13	End Bell	28.50 ea	142.50
EA 24	D5	W T Conn. Box (21 lbs. each)	4.00 ea	96.00
EL 25	D6	W T Conn. Box Cover		
		(15 lb. each).....	2.85 ea	71.25
L 5	B2	Clamp 1 3/16 .....	.20 ea	1.00
EL 5	B2	Clap 11/16 (1 lb. each).....	.20 ea	1.00
A 5	C12	Dummy End Bell R	3.25 ea	16.25
A 5	C12	Dummy End Bell L	3.25 ea	16.25
				771.75

[Crawford & Doherty Foundry Company Statement]

3/31/42

Sold To	Marine Electric Co.	Your Req. No. 439
		Our No. 25743
		Inv. No. 26406
Shipped To	Call	Terms Net 10 Prox

A 4	D4	Spider (96 lbs. each)B	15.00 ea	60.00
L 2	B2	Clamp 1 13/16 (2 lbs. each)....	.20 ea	.40
L 3	B2	Clamp 11/16 (1.3 lbs. each)....	.20 ea	.60
A 7	D7	End Bell (200 lbs. each).....	28.50	199.50
				260.50

[Crawford & Doherty Foundry Company Statement]

3/31/42

Sold To	Marine Electric Co.	Your Req. No. 1325
		Our No. 0111
		Inv. No. 26432
Shipped To	Call	Terms Net 10 Prox

A 1	8 1/4 Dia Face Plate	2.50
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(Testimony of Dean B. Card.)

Q. Mr. Card, you have in your hands Exhibits 31 and 32. State in a general way what they are.

A. Exhibit 31 includes invoices to Marine Electric Company covering deliveries in the month of January, 1942.

Q. Now then, Exhibits 30 and 31, you refer to them as invoices. Those are not the original invoices, are they? A. No, these are copies.

Q. When were they made up?

A. Yesterday.

Q. In relation to the originals?

A. Those were made up yesterday.

Q. From what data? Where did you get your data for making up those?

A. From the original data that the original invoice was made from, or from a copy—copied from the original invoice.

Q. And how are they retained in your file?

A. In numerical order.

Q. And made up in book form?

A. And they are put on a post binder and in numerical order. [149]

Q. Post binder. Well, what you have in your hand is Exhibit 31. That is a copy from the carbon copy of the original invoice; is that correct?

A. Not a carbon copy. It is a—

Q. No. Wait a minute. It is made from a carbon copy of the original, isn't it?

A. That is right.

Q. Yes. That is, what you have in your book

(Testimony of Dean B. Card.)

where you keep them in numerical order, that is a carbon copy, is it not? A. It is.

Q. Yes. And Exhibit 31 is a copy made from the carbon copy; is that correct??

A. That is right.

Q. And made by whom? A. By me.

Q. Personally? A. Personally.

Q. You know that that is an accurate reproduction of the invoices as reflected by your original records? A. Exactly.

Mr. Henderson: Yes. I offer in evidence, if the Court please, Exhibit 31.

The Court: And what is 32?

Mr. Henderson: 32 is a group of our invoices for another month. [150]

The Court: What month?

Mr. Henderson: The month of March.

The Court: Take them both down to Mr. Wagner.

Mr. Henderson: I offer both of them in evidence.

Mr. Wagner: The objection is that they are not determinative of any prices that are in this controversy here and as such are incompetent, irrelevant and immaterial; that there is no evidence to establish the fact that this purchaser is one in the same class as any other purchaser involved in this controversy. We have no objection as to their authenticity.

The Court: Well, you always are very fair. I admire you for being distinct like that. But passing

(Testimony of Dean B. Card.)

whether they are of the same class, they would have a bearing, wouldn't they?

Mr. Wagner: No, your Honor. I tried to make that clear a short while ago in the difference in the method of pricing that is being used here.

The Court: You mean per——

Mr. Wagner: Per each casting and not per pound of the casting.

The Court: Well, passing that question also, if from your point of view they were priced the same, and this purchaser was in the same class, they would have a bearing?

Mr. Wagner: There still is the question of whether or not the casting is substantially the same casting.

The Court: Well, passing that—— [151]

Mr. Wagner: Well, those are the grounds of the objection.

The Court: Yes; I understand; but passing all of those things, they would have a bearing on the statute and regulation, wouldn't they?

Mr. Wagner: Yes, that is true, as to the point of time only.

The Court: As to what?

Mr. Wagner: As to the point of time, excluding——

The Court: Yes.

Mr. Wagner: ——excluding, of course, all the other things.

The Court: I understand. But how would they

(Testimony of Dean B. Card.)

work, laying those other questions aside? I want the benefit of your calculation.

Mr. Wagner: Well, those are about the only questions, as far as pricing is concerned, your Honor. As to Regulation 244 they can't apply.

The Court: Cannot?

Mr. Wagner: They cannot apply.

The Court: Why?

Mr. Wagner: Because of the requirement that the subsequent pricing be maintained on a per customer basis.

The Court: 244?

Mr. Wagner: Yes; M. P. R. 244.

The Court: I never heard your side of that. I want to hear you now. [152]

Mr. Wagner: As to General Price Maximum Regulation they would probably have some hearing.

The Court: They would, wouldn't they?

Mr. Wagner: Yes. That is, the March, 1942, deliveries would have some hearing; that is, assuming you could say the price was the same and the class of purchaser was the same.

The Court: I think I am going to hold against you on that. That is why I wanted to see what you were willing to concede about that. What are you going to do about this class of purchaser point?

Mr. Henderson: If the Court please, that is a legal question. Here is our position about that. The courts have repeatedly held that this law was for the purpose of fixing prices but not to regulate

(Testimony of Dean B. Card.)

business; to standardize prices, to try to make a uniform price, and there was nothing in the law itself that gave—Congress never gave to the Administrator any right to do anything more than fix prices generally over all the business, and gave him at no place a right to say that if you sold to one person for a particular price you had to continue to sell to that person for a particular price. Congress didn't do that. Congress didn't delegate that power to the Administrator. Congress delegated only to the Administrator the powers to fix a general price in the industry. You read the Act all the way through, it is talking about the industry—talking about the industry all the time. [153] Whoever drew up the regulation, this second regulation, merely took the first regulation and tried to broaden it without going back to the original Act to see what the original authority was. So as far as that part of it is concerned it is entirely illegal, and we claim that the proviso that says that you have to continue a price to a particular customer, regardless of what the general price was, is beyond the power of the Administrator.

The Court: Now I get it. Let's finish the examination.

Mr. Henderson: Q. Mr. Card, I understand, or did I not understand, that you had called upon the Office of Price Administration various times to try to find out the application of the rules and regulations to your business? A. Yes.

(Testimony of Dean B. Card.)

Q. Did you ever at any time get a clear-cut statement as to what you could or what you could not do, or did you ever at any time leave their office other than in a state of bewilderment?

A. No.

The Court: Well, maybe he went there in that fix anyway.

Mr. Henderson: Q. Well, you did go there in a state of bewilderment, didn't you?

A. I did.

Q. Did you ever—were you ever able to get anyone in the office, the local office of the Price Administration, to explain [154] to you how the Maximum Price Regulation, the original Maximum Price Regulation, applied to your various systems of pricing? I mean systems of pricing; I mean pricing to one person by piece and to another person by pound, and so on.

A. No, we never did get anything straight on that.

Q. Did you ever get anything thoroughly explained to you? For instance, you got a letter from MacCormac Snow, didn't you, at one time, telling you what no to do? Or did he gave you some advice what not to do?

A. He told us what we had to do.

Q. What was it he told you you had to do?

Mr. Wagner: Just a minute.

The Court: Just to kind of work this along pretty fast, it is bearing on good faith, is all.

(Testimony of Dean B. Card.)

Mr. Henderson: Yes. And there is one other thing here. MacCormac Snow—and if they will stipulate it it is all right. It is covered by a letter anyway; MacCormac Snow told them that they could not proceed to fix a certain price, or protest a certain price, unless they paid up what they claimed was then due.

The Court: Yes. I know you have pleaded that. You go ahead and prove that.

Mr. Henderson: Do you concede that such a letter was written?

Mr. Wagner: I will concede the letter was written but [155] I am not going to concede——

Mr. Henderson: The effect?

Mr. Wagner: —that Mr. Card is in a position to testify as to the effect of that letter.

Mr. Henderson: Mark that.

(The photostatic copy of letter dated February 10, 1943, Thaddeus W. Veness, Chief Attorney, by MacCormac Snow, Chief Enforcement Attorney, to Crawford & Doherty Foundry Company, so offered, was marked Defendant's Exhibit 33 for identification.)

Mr. Henderson: I offer in evidence this letter that is being marked Exhibit 33.

The Court: State your objection.

Mr. Wagner: I would like to state an objection to the introduction of this letter, to its relevancy here. I would also like to have the record disclose—I haven't been able to find it yet—that Mr. Card

(Testimony of Dean B. Card.)

received other correspondence telling him exactly what to do in the particular situation. Evelyn Cooper's letter, do you have that?

Mr. Henderson: Yes. I offer in evidence all of these letters.

Mr. Wagner: Well, may I look at it first?

Mr. Henderson: Yes. [156]

Mr. Wagner: I don't think there is any objection but I would like to look at it. Do you have another letter from Evelyn Cooper?

Mr. Henderson: No. If you have one, show us the letter and introduce it, Counsel. We will not object to it.

Mr. Wagner: I have no objection to any of them, but I would like to have this one go in.

Mr. Henderson: Oh, yes. These ought to be your case. But mark all of these.

The Court: They will all be marked one number. There is another one coming there from Mr. Wagner.

Mr. Wagner: Letter of September 14th, 1942.

Mr. Henderson: Yes. Well, introduce that.

The Court: That goes in with the other as one number. It should be Exhibit 33.

(Pursuant to the foregoing, photostatic copy of November 9, 1942, Thaddeus W. Veness, State Attorney, by Evelyn N. Cooper, State Price Attorney, to Willamette Iron & Steel Co.; photostatic copy of letter dated April 2, 1943, Thaddeus W. Veness, Chief Attorney, by

(Testimony of Dean B. Card.)

MacCormac Snow, Chief Enforcement Attorney, to Crawford & Doherty Foundry Company; photostatic copy of letter dated March 12, 1943, Thaddeus W. Veness, [157] Chief Attorney, by MacCormac Snow, Chief Enforcement Attorney, to Crawford & Doherty Foundry Company; and photostatic copy of letter dated September 14, 1943, Thaddeus W. Veness, State Attorney, by Evelyn N. Cooper, State Price Attorney, Oregon State Office, to Crawford & Doherty Foundry Company, were attached to Defendant's Exhibit 33, which was marked received.)

DEFENDANT'S EXHIBIT No. 33

Office of Price Administration

Bedell Building

Portland, Oregon

In Reply Refer to 8410-127SF-d

February 10, 1943

Crawford & Doherty Foundry Co.

4604 S. E. Seventeenth Avenue

Portland, Oregon

Attention: Mr. Card

Gentlemen:

Your letter of February 9 is at hand. My recollection is that in November I urged you to prepare and file with the Price Division such application for adjustment as you felt entitled to, but at the

(Testimony of Dean B. Card.)

same time stated that according to the practice of the Price Division any such application could not be acted upon favorably until your company made a satisfactory adjustment on account of past violations. I still suggest filing any application you want to make with the Price Division.

Since November, however, I have been able to get more complete information about the extent of your past price violations. These violations according to my figures which I believe are entirely correct, and cover the period from August 1, 1942 to January 1, 1943, amount to \$18,185.68. This sum trebled amounts to \$54,557.04. The violations which occurred prior to August 1, 1942 amount to \$2562.77.

On account of these violations our Washington office is considering the possibility of a criminal prosecution and our San Francisco office has advised an injunction suit.

I do not recall cancelling any appointment with you nor do I remember intending or desiring to cancel any such appointment. I shall be glad to discuss with you or Mr. Stirnweis, or both of you, at any time the affairs of your company in relation to the Office of Price Administration. The situation is very bad but I still hope we may be able to find a way out. It is my chief hope that a method may be found whereby your plant, your Meehanite franchise, and your ability to turn out good castings

(Testimony of Dean B. Card.)

may continue without break to be devoted to the war effort.

Very truly yours,

THADDEUS W. VENESS

Chief Attorney

By MacCORMAC SNOW

Chief Enforcement Attorney.

MSnow/EMF

Office of Price Administration

Bedell Building

Portland, Oregon

In Reply Refer to 6F:8-4:ENC(L)

November 9, 1942

Willamette Iron and Steel Co.

350 N. E. Front Avenue

Portland, Oregon

Attention: Mr. Viken

Gentlemen:

This will confirm my telephone conversation with your Mr. Viken concerning the proper ceiling price of gray iron castings purchased from Crawford and Dougherty.

From May 11 to October 26 gray iron castings have been covered by the General Maximum Price Regulation. During that period, you have been billed by Crawford and Dougherty for castings at the price which you paid in March. Crawford and Dougherty now advises that it intends to bill you for an additional amount representing the differ-

(Testimony of Dean B. Card.)

ence between the price which you have been paying and that paid by Iron Fireman for the same castings. You asked whether this additional billing is permissible and whether you can properly pay the addition.

We have recently checked the March records of Crawford and Dougherty and found that during March it delivered an order of these castings to Iron Fireman at a higher price than the price at which it delivered to you during the same month. That being the case, and Iron Fireman being a purchaser of the same class as your Company, the ceiling price on sales to you is the price charged Iron Fireman during March. Consequently, Crawford and Dougherty can properly charge, and you may pay, the difference between your March price and Iron Fireman's under the regulation. Of course, it is a question of contract law with which we are not concerned as to whether you are legally required to pay the difference. Sales at less than ceiling prices are permissible under the regulation.

In accordance with your request, we enclose a copy of Maximum Price Regulation No. 244 on gray iron castings. Effective October 26, this regulation supersedes the General Maximum Price Regulation. Castings received after October 26 must be priced and paid for in accordance with the new regulation.

(Testimony of Dean B. Card.)

If we can be of further assistance, please communicate with us.

Very truly yours,

THADDEUS W. VENESS

State Attorney

By: EVELYN N. COOPER

(Mrs.) Evelyn N. Cooper

State Price Attorney

Enc.

District Office

Office of Price Administration

Bedell Building

Portland, Oregon

In Reply Refer to 8410-00127

April 2, 1943

Crawford & Doherty Foundry Co.,

4604 S. W. 17th

Portland, Oregon.

Gentlemen:

The Regional Office has today instructed me to the effect that you are now entitled to charge the prices requested in your application under Proce-

(Testimony of Dean B. Card.)

dural Regulation No. 6, subject, of course, to the provisions of that regulation.

Very truly yours,

THADDEUS W. VENESS

Chief Attorney

By: MacCORMAC SNOW

MacCormac Snow

Chief Enforcement Attorney

MSnow:me

cc to Regional Enforcement

Attorney

cc to Regional Administrator.

Office of Price Administration

Bedell Building

Portland, Oregon

In Reply Refer To: 8410-00127

March 12, 1943.

Crawford & Doherty Foundry Co.,

4604 S. E. 17th,

Portland, Oregon.

Gentlemen:

Your application under Procedural Regulation No. 6 was handed to the Price Division yesterday for an adjustment of the price of gray iron castings. This application cannot be acted upon to permit you to quote the prices you request in your application until you have made a satisfactory adjustment for your past overcharges.

(Testimony of Dean B. Card.)

In the mean time the Price Division permits me to say that they have already started to make an analysis of your application.

Very truly yours,

THADDEUS W. VENESS

Chief Attorney

By: MacCORMAC SNOW

MacCormac Snow

Chief Enforcement Attorney

Ms:me

Office of Price Administration

Bedell Building

Portland, Oregon

In Reply Refer to 6F:8-4:ENC(L)

September 14, 1942

Crawford & Doherty Foundry Co.

4604 Southeast 17th Avenue

Portland, Oregon

Attention: Mr. Card

Gentlemen:

This will confirm my telephone conversation with you concerning the proper price of gray iron castings on sales to Willamette Iron & Steel Co. and The Iron Fireman.

During 1941 you entered into a contract with Willamette Iron & Steel Co. for the sale of gray iron castings and during March 1942 made deliveries under that contract. Early in 1942 you took an order from The Iron Fireman for castings

(Testimony of Dean B. Card.)

at higher prices but made no deliveries on that order until after March.

You claim that you can not continue to manufacture gray iron castings at the contract price and ask whether you can sell to Willamette Iron & Steel Co. at The Iron Fireman price.

The ceiling price on sales to Willamette Iron & Steel Co. and The Iron Fireman, both, is the contract price at which you made deliveries to Willamette Iron & Steel Co. during March. This price can be increased only on the basis of an application for adjustment.

Since the castings in question are produced for installation in ships being constructed under contract with the Government, you would qualify for adjustment under Procedural Regulation No. 6. This Regulation permits you to sell at the increased price requested to be established as the ceiling upon the filing of the application. It is my understanding that you have copies of this Regulation.

Very truly yours,

THADDEUS W. VENESS

State Attorney

By: EVELYN N. COOPER

(Mrs.) Evelyn N. Cooper

State Price Attorney

Oregon State Office

(Testimony of Dean B. Card.)

Cross Examination

By Mr. Wagner:

Q. Mr. Card, referring to Exhibit 29, the letters that were purportedly written by myself to the three concerns, the Willamette Iron & Steel——

The Witness: I didn't hear that first.

The Court: You know what they are; the letters from Mr. Wagner to the three companies.

The Witness: Yes.

Mr. Wagner: Q. It is a fact, Mr. Card, that the figures and the quotations that were set forth in those letters were furnished me by yourself, in my office; is that not a fact?

A. Not entirely.

Q. Well, will you explain.

A. They were taken, some of these figures were taken from [158] your photostat copies of Mr. Fox' sheets where he had made these investigations.

Q. And I am talking about the withheld amounts.

A. The withholding is from my records.

Q. From your records. And all of those figures were supplied us, and particularly so pursuant to negotiations for settlement of this controversy; isn't that true?

A. Pursuant to a proposed settlement?

Q. That is true, is it not?

A. That is right.

Mr. Henderson: Would Counsel care to state to the Court now whether any of those companies that received those letters from your office denied the amounts?

(Testimony of Dean B. Card.)

Mr. Wagner: I have never heard from them.

Q. Mr. Card, you are still maintaining your raised price structure in connection with their four accounts, are you not?

Mr. Henderson: I object to that as incompetent, irrelevant and immaterial. It has nothing to do with the issues in this case.

The Court: He may answer, subject to the objection. Are you maintaining the raised prices?

A. We didn't raise any prices.

Mr. Wagner: Q. Didn't you in April in 1942?

A. Pardon?

Q. You raised your prices in April of 1942?

[159]

A. Yes. Those prices we have maintained.

Q. You have maintained them ever since?

A. That is right.

Q. You are still charging them to your customers?

A. That is right.

Q. And you intend to continue charging those prices?

Mr. Henderson: If the Court please——

Mr. Wagner: Well, I can call him as my own witness, Mr. Henderson, if I want to ask him this question.

The Court: He may answer. So far as you know—you are not running the business, though, are you?

The Witness: Pardon?

The Court: You don't run the business, do you?

(Testimony of Dean B. Card.)

A. Not entirely, no.

The Court: No.

Mr. Wagner: Q. Did you make a computation of the total amount of business done with Marine Electric Company in the period March of 1942, from invoices? A. Yes.

Q. How much business was it?

A. Forty-four hundred and some odd dollars.

Q. From those invoices? A. Yes, sir.

Q. In March of 1942 to Marine Electric Company?

A. I believe it was forty-four hundred and four dollars. [160]

Q. How about January of 1942? Did you make a computation of the total amount done with Marine Electric in January, '42? A. Yes.

Q. How much was that?

A. One hundred eighty dollars.

Q. \$180.00? A. That is right.

Mr. Wagner: I think that is all.

(Witness excused.)

Mr. Henderson: That is our case.

The Court: Rebuttal, Mr. Wagner. Finish.

Mr. Wagner: Call Mr. Lamp.

REBUTTAL

H. M. LAMP

was thereupon produced as a witness in rebuttal in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Wagner:

Q. State your name, please.

A. H. M. Lamp.

Q. What is your occupation, Mr. Lamp?

A. Production Manager of the Marine Electric Company.

Q. How long have you been so employed? [161]

A. By the company or in that position?

Q. Well, by the company.

A. Since April 5th in '43.

Q. Since April 5th in 1943? A. 1943.

Q. Are you familiar with records of the concern covering the transactions during the latter part of 1941 and '42? A. No, sir.

Q. You are not? A. No.

Q. Is your concern now purchasing castings from Crawford & Doherty Foundry Company?

A. Yes, sir.

Q. What type of castings are those?

A. Pardon?

Q. What type of castings are they?

A. At the present time mostly small motor castings.

(Testimony of H. M. Lamp.)

Q. When you say small motor castings, what do you mean by that??

A. Well, we build motors from 5 to 20 horse power; also build steam engines.

Q. How big is the motor from 5 to 20 horsepower?

A. Oh, approximately 20 inches in diameter for 20 horse, and about 15 inches for a 5.

Q. Approximately what would those castings weigh, on an [162] average?

A. Various castings. They will vary anywhere from two pounds to a hundred.

Q. Are you familiar with the extent of the business that Marine Electric is doing now with Crawford & Doherty?

A. Yes.

Q. How much does that run, on a per month basis?

A. You mean average for, say a year?

Q. Yes.

A. Oh, I should judge probably the last year in the neighborhood of two thousand, maybe twenty-five hundred dollars a month.

Q. Twenty-five hundred dollars a month?

A. Two thousand or—I wouldn't know without looking it up. Approximately that.

Q. And has that prevailed during the last year, too, during 1943?

A. I should judge so, yes.

Mr. Wagner: That is all.

Mr. Henderson: No cross.

(Witness excused.)

N. P. JOHN

is thereupon produced as a witness in rebuttal
behalf of the plaintiff and, having been first duly
sworn, testified as follows: [163]

Direct Examination

By Mr. Wagner:

Q. Will you state your name?

A. N. P. John.

Q. What is your occupation, Mr. John?

A. Accountant for the Marine Electric Com-
pany.

Q. How long have you been there?

A. Three years.

Q. About three years. You started when, about?

A. December 10th, 1941.

Q. 1941, December 10th. You are familiar with
the volume of business the Marine Electric has
done with Crawford & Doherty during your employ-
ment?

A. Yes, somewhat.

Q. What was the volume of business during De-
cember of 1941, do you recall?

A. I am afraid I couldn't recall that.

Q. Do you recall there was any?

A. I was not working as the accountant at that
time.

Q. You were what?

A. I was not working as account for Marine
Electric at that time.

Q. Oh, I see. When did you start as accountant?

A. In March of '44.

(Testimony of N. P. John.)

Q. March o f '44? [164]

A. Yes.

Q. Are you familiar with the records extending back to 1942, the beginning of 1942?

A. To an extent, yes.

Q. You haven't made any accurate computation of them? A. No, I haven't.

Mr. Wagner: I think that is all.

Mr. Henderson: That is all.

Mr. Wagner: Thank you for coming.

(Witness excused.)

Mr. Wagner: Call Mr. Fox.

GLEN FOX

was thereupon recalled as a witness in rebuttal in behalf of the plaintiff and, having been previously sworn, further testified as follows:

Direct Examination

By Mr. Wagner:

Q. Mr. Fox, during your investigation of the Crawford & Doherty Company transactions did you have occasion to discuss the situation with Mr. Card at various times? A. Yes, sir.

Q. Do you recall about when you first discussed this situation with Mr. Card?

A. Well, I don't recall just when the case started. It must [165] have been around June or July, 1942.

Testimony of Glen Fox.)

Q. At that particular time did you discuss the question of various classes of purchasers of the Crawford & Doherty Foundry Company with Mr. Card?

A. Yes, sir.

Q. And what did Mr. Card tell you in connection with that situation?

A. Well, that they made the same kind of castings for Iron Fireman as they did for Willamette Iron & Steel, but they made a different kind of casting for Bingham Pump and a different kind of casting for Tuerck MacKenzie.

Q. Did Mr. Card mention Marine Electric Company to you at that time?

A. I don't—I don't think so.

Q. Did you confer as to any other purchasers of the Crawford & Doherty Foundry Company?

A. Yes, sir.

Q. In what manner?

A. Well, after we had picked up the four ones discussed here, the Tuerck MacKenzie, Bingham Pump, Willamette Iron & Steel and Iron Fireman, asked him if there were any further, and he had also mentioned before the account of the American Iron Company. We threw that out because it was illegible, and he said——

Q. When you say "We threw that out", what do you mean? [166]

A. I say, we didn't use that.

Q. You are talking about you and Mr. Card?

A. I think the O.P.A. did that.

Q. O. K.

(Testimony of Glen Fox.)

A. And he said that other, at least I understood that other accounts that they had were small accounts, more or less like the American Can account.

Q. Did he mention to you the Marine Electric Company at any time?

A. I think at one time I asked him about Marine Electric, but I have forgotten now what he said.

Q. When did Mr. Card, to your knowledge, first contend that the Marine Electric Company was in the same class of purchaser as one or all of the other four that are involved here?

A. I don't think he ever contended that to me.

Q. Never breached that to you at all?

A. No.

Q. At any time? A. No.

Q. During your investigations? A. No.

Mr. Wagner: You may cross examine.

Mr. Henderson: No cross examination.

The Court: Have you investigated other foundries in town?

A. Just as a helper on some of the others. [167]

The Court: Well, how does this Crawford & Doherty compare in size?

A. Well, it is pretty good——

The Court: To those you know about?

A. Yet I wouldn't have any way of answering that.

The Court: All right.

(Witness excused.)

Mr. Wagner: That is our rebuttal, your Honor.

The Court: Is there anything you want to talk about that we haven't talked about as we have gone along, or that we didn't discuss previously? Are there any points, I mean, I should give consideration to that have not been impressed on me previously, either here or at pre-trial?

Mr. Wagner: I have none, your Honor.

Mr. Henderson: I don't believe so, your Honor. This is not a direct answer to your question, but I think there is one thing that for your convenience ought to be straightened out by counsel, and that is the bill of particulars.

Mr. Wagner: Oh, I am sorry. I have an explanation of that.

Mr. Henderson: I was talking with counsel for the Government this morning and I think we ought to revise that some way or other.

Mr. Wagner: There were some items that were included in the bill of particulars that indicate the invoices to be [168] dated on or subsequent to November 26th.

The Court: I am sure I don't need to give attention to that in the view that I take of the case. Mr. Wagner, what is the name of that San Francisco gentleman, McTernon?

Mr. Wagner: McTernon.

The Court: Spell it.

Mr. Wagner: M-e-T-e-r-n-o-n.

The Court: Is he a laweyr?

Mr. Wagner: Yes.

The Court: And what was his title at the time he gave instructions to begin this case?

Mr. Wagner: Regional Enforcement Attorney.

The Court: And whom did he give the instructions to?

Mr. Wagner: Mr. McDannell Brown and myself.

The Court: And then you two gentlemen, pursuant to that instruction, began the case?

Mr. Wagner: That is right.

The Court: Under what authority did Mr. McCernon give you that instruction?

Mr. Wagner: What his authority was?

The Court: That is right; yes.

Mr. Wagner: Well, it would be the general order of delegation which previously has been considered, I think General Order No. 64.

The Court: No. 64? [169]

Mr. Wagner: I believe that is it but I am not sure.

The Court: Anyhow, a copy of it could be put in the record, and should be put in the record.

Mr. Wagner: I will arrange for that.

The Court: Is the situation, so far as attempted delegation of authority, the same as in the Wheeler case?

Mr. Wagner: Well, there is that same General Order of Delegation to the Regional Office from the Administration.

The Court: No. 64, if that is the correct number, is in the Wheeler case?

Mr. Wagner: If that is the correct number. Then the express instruction as to this case by Mr. McTernon, which are a different set of circumstances than in the Wheeler case. Then, your Honor, I just recently understood that there was another order that the Administrator had made, which has a tendency to ratify some of these previous inconsistent orders. Now I don't know whether your Honor would like to consider that or not. It would probably more apply to the Wheeler case than to this situation.

The Court: Well, we are here winding up the case now and it is about to be submitted, and if you have something more to put in here other than the order, of which the number for the present is 64, why——

Mr. Wagner: Well, I think that the General Order 64 is the one upon which Mr. McTernon can be said to have acted, [170] to the best of my knowledge.

The Court: All right. And that is the one that was presented to me and that I considered in the Wheeler case?

Mr. Wagner: That is right.

The Court: Now I don't think either one of you is going to be satisfied with what I am going to do. I am going to hold with each one of you in part, ending up with denying any recovery to the O.P.A., but I want the findings of fact to cover the very serious questions. I want to hold with Mr. Henderson and Mr. Randall on what they claim for the Marine Electric account. I want to hold

with Mr. Wagner and Mr. Joy on what they claim for M. P. R. 244, customer to customer—the customer by customer clause. So you can do your own calculating and agree on it between yourselves.

I want to hold with Mr. Henderson and Mr. Randall on the good faith defense, and I want that finding written up in the language of the statute as it was amended this June.

And then I want to hold, as I did in the Wheeler case, that the case was brought without lawful authority and, therefore, all recovery is denied.

I want the record made up in that way, so that anybody else looking at it can do something else with it if they want to.

Now I don't know whether each side wants to get up [171] its own full findings in support of its full contentions, leaving it to me to pull them apart and compose them in this way that I have indicated, or whether you want each on his side to get up the findings on the issues on which I am holding with him. Do it just as you may please yourselves about that. Agree between yourselves about that.

Mr. Henderson: Yes.

The Court: And do it right away, please, because I have to go away.

Mr. Wagner: If your Honor please, there has been no pre-trial order in this case.

The Court: No. We will consider this case having been tried with the benefit of pre-trial conferences but without having completed the pre-trial.

Mr. Wagner: Very well, your Honor. Then for the purposes of the record, in connection with the

last remark by Mr. Henderson as to the bill of particulars, I would like to have the record show the deliveries in those particular instances, the date of the invoices were subsequent to October 26th but that the deliveries had been made before October 26th, 1942, even though the invoices were dated on——

The Court: I will leave you to finish your discussions on that. I think I have done all I can do.

(Thereupon, at 11:34 o'clock A.M., court was adjourned.) [172]

Wednesday, December 20, 1944, at the hour of 10:00 o'clock A.M., further proceedings were had herein, as follows:

Mr. Henderson: May it please the Court, counsel for the Government and counsel for the defendant in the case of Bowles versus Doherty, Civil 2124, have conferred in respect to Findings of Fact and Conclusions of Law. In fact, the attorney for the Government submitted to us a proposed set of Findings and Conclusions, a part of which we adopted and a part of which we changed and have served upon counsel for the Government, and it is our understanding, although he does not agree as to any finding being made that is adverse to the Government, I understood him to say that he considers that that does correctly interpret your Honor's ruling. Then he also prepared a form of

order of dismissal which is acceptable to us, and we are now submitting it, if the Court please.

Mr. Wagner: Your Honor, in connection with the findings, the portion which Mr. Henderson and I did not agree upon concerned the amounts of money which the purchasers of Crawford and Doherty Foundry Company have been withholding for a period of time. Now, at the conclusion of the trial no specific finding was made by your Honor in connection with those amounts.

The Court: I don't see that that is material to the decision, but I will be glad to hear both of you.

Mr. Wagner: I objected to them going into the findings [173] particularly for that reason, your Honor, and now Mr. Henderson has been quite insistent that they go in.

The Court: It bears on the good faith.

Mr. Henderson: Yes, and even further than that—

The Court: I will hear you in a minute.

Mr. Wagner: One other matter, your Honor,—

The Court: And you can't agree as to the amount?

Mr. Henderson: Yes, we do.

Mr. Wagner: Yes; there is no disagreement as to the amount.

The Court: All right.

Mr. Wagner: It is merely as to whether or not those amounts should go into the findings.

The Court: Well, as to whether that is a pertinent finding.

Mr. Wagner: That is right.

The Court: To that you don't agree.

Mr. Wagner: That is right. Now, one other matter that I wish to have into the record: That was in connection with the authority as delegated by the Administrator to the Regional Chief Enforcement Attorney to institute actions. My recollection is that I named it General Order No. 64 during the course of the trial.

The Court: If my recollection is correct, we weren't sure of the number. We called it by provisional numbers. [174]

Mr. Wagner: That is correct. I now have them, and I would like to have the record show that the order is Revised General Order No. 3, 8th Federal Register, page 8027, which was issued and effective on the 10th day of June, 1943; also Second Revised General Order No. 3, which was issued and became effective on September 7, 1944. This Second Revised General Order includes, in addition to the previous orders, a provision for the ratification by the Administrator and approval of the institution of any preceding actions that were brought——

The Court: I hope I didn't have anything to do with that Revised Order Number Two.

Mr. Wagner: Well, I am not at all aware of what the circumstances were, your Honor, in the issuing of that order, but I did want them included in the record at this time.

The Court: Well, I will want to look at it, of course. That is new to me. That is the first time I have heard of this ratifying order in any of the cases, and I think it is entirely proper for you to

put them in now, because you all reserved your right to put in such orders as you relied upon as your authority, and these two may be given exhibit numbers in their order.

(The two documents referred to, so offered and received, were thereupon marked as follows: Copy of Revised General Order 3 was marked received as Plaintiff's Exhibit 34; and [175] Copy of Second Revised General Order 3 was marked received as Plaintiff's Exhibit 35.)

PLAINTIFF'S EXHIBIT NO. 34

Federal Register, Volume 8, Number 116, Washington, Saturday, June 12, 1943, page 8027:

"Rev. Gen. Order 3

"REPRESENTATION OF ADMINISTRATOR IN COURT PROCEEDINGS SERVICE OF PROCESS

"General Order No. 3 is revised and amended to read as follows:

"Pursuant to the authority conferred upon the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Orders 9125, 9250, 9280, and 9328, the following order is prescribed:

"(a) Institution of and intervention in civil proceedings. The General Counsel or the Acting General Counsel, the Director of the Enforcement Division or the Acting Director, the Regional Attorneys or the Acting Regional Attorneys, and

the Regional Enforcement Attorneys, or the Acting Regional Enforcement Attorneys, are each authorized to institute and intervene in appropriate civil actions or proceedings, in the name of the Price Administrator; and any of them may authorize any other attorney employed by the Office of Price Administration to institute or intervene in appropriate civil actions or proceedings in the name of the Price Administrator. Except as herein provided, no other officer or employee of the Office of Price Administration, whether employed in the principal office in Washington, D. C., or in any regional or field office, has authority to institute or intervene in proceedings on behalf of the Price Administrator.

“(b) Service of process upon the Administrator. Service of process upon the Price Administrator may be made by serving him personally, or by leaving a copy thereof at the Office of the Secretary, Office of Price Administration, Washington, D. C. No other officer or employee of the Office of Price Administration, whether employed in the principal office in Washington, D. C., or in any regional or field office, is authorized to accept service of process on behalf of the Price Administrator or enter his appearance in any action or proceeding except as herein provided.

“(c) Appearance for the Administrator in defensive suits. The General Counsel or the Acting General Counsel, the Director of the Enforcement Division or the Acting Director, and the Assistant General Counsel or the Acting Assistant General

Counsel in charge of the Court Review, Research and Opinion Division are each authorized to appear for and represent the Price Administrator or the Office of Price Administration in any action or proceeding instituted against the Price Administrator or the Office of Price Administration in the Emergency Court of Appeals and in proceedings for the review of determination of the Emergency Court of Appeals in the Supreme Court; and any of them may specifically authorize any attorney employed by the Office of Price Administration to appear for and represent the Price Administrator or the Office of Price Administration in any such action or proceedings. The General Counsel or the Acting General Counsel, and the Director of the Enforcement Division or the Acting Director are each authorized to appear for and represent the Price Administrator or the Office of Price Administration in any other action or proceeding instituted against the Price Administrator or the Office of Price Administration; and any of them may specifically authorize any attorney employed by the Office of Price Administration to appear for and represent the Price Administrator or the Office of Price Administration in any other such action or proceeding.

“Issued and effective this 10th day of June 1943.

“GEORGE J. BURKE,
Acting Administrator.

“F. R. Doc. 43-9454; Filed, June 10, 1943;
3:51 p.m.)”

PLAINTIFF'S EXHIBIT NO. 35

SECOND REVISED GENERAL ORDER 3

Revised General Order No. 3 is revised and amended to read as follows:

Pursuant to the authority conferred upon the Price Administrator by the Emergency Price Control Act of 1942, as amended, the Act of June 28, 1940 (54 Stat. 676) as amended, and Executive Orders 9125, 9250, 9280, and 9328, the following order is prescribed:

(a) Institution of and intervention in civil proceedings. The General Counsel or the Acting General Counsel, the Deputy Administrator in Charge of Enforcement, or the Acting Deputy Administrator in Charge of Enforcement, the Director of the Litigation Division or the Acting Director of the Litigation Division, the Regional Enforcement Executives or the Acting Regional Enforcement Executives, the Regional Litigation Attorneys or the Acting Regional Litigation Attorneys, the District Enforcement Attorneys or the Acting District Enforcement Attorneys are each authorized to institute and/or intervene in, and to conduct appropriate civil actions or proceedings, in the name of the Price Administrator; and any of the foregoing may authorize any other attorney employed by the Office of Price Administration to institute and/or intervene in, and to conduct appropriate civil actions or proceedings in the name of the Price Administrator. Except as herein provided, no other officer or employee of the Office of

Price Administration, whether employed in the principal office in Washington, D. C., or in any regional or field office, has authority to institute or intervene in proceedings on behalf of the Price Administrator.

The Price Administrator does hereby ratify, approve and confirm all acts done and all proceedings had or taken by an attorney-at-law regularly admitted to practice in any state, territory, or district, purporting to act in the name of or on behalf of the Price Administrator in any suit, action or proceeding heretofore at any time brought or purporting to be brought by the Price Administrator in any court of the United States or of any state, territory or district, said ratification, approval and confirmation to have the same force and effect as if specific authority to institute and conduct such suit, action or proceeding had been expressly granted by the Price Administrator to such attorney immediately prior to the commencement of such suit, action or proceeding. Without in any manner limiting the generality of the foregoing, the Price Administrator does hereby ratify, approve and confirm all acts done and all proceedings had or taken by any such attorney in instituting, maintaining and prosecuting any and all suits, actions and proceedings of whatsoever nature heretofore at any time brought or purporting to be brought in the name of the Price Administrator under the provisions of section 205(a) of the Emergency Price Control Act of 1942 to enjoin violations of said act or any order, schedule or regulation thereunder, or

under the provisions of section 205(e) of said act as originally enacted, or as amended, to enforce any liability created by said section or under the provisions of section 205(f) of said act to revoke the license of any person licensed under said act, or under section 202 of said Act to enforce compliance or obedience to any subpoena, order or requirement issued or purporting to be issued under said section, or under subdivision 6 of subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676) as amended, to enforce compliance with, or obedience to, or to enjoin violations of, or to enforce any liability or duty created by, any rule, regulation, order, or subpoena issued under said subsection (a).

CHESTER BOWLES

Administrator Office of Price
Administration

Issued 9-7-44, 9 FR 11137 (effective 9-7-44)

The Court: Have you finished?

Mr. Wagner: Yes, your Honor.

The Court: Have you read this, Mr. Henderson?

Mr. Henderson: Yes, I have, your Honor.

The Court: Have you read the ratifying order?

Mr. Henderson: Yes, I have, your Honor. Well, as far as admissibility, I am sure we had contended merely because we consider that it doesn't have any legal efficacy, the fact that it goes in as an exhibit doesn't add to its efficacy as controlling orders.

The Court: No; what we are getting at is, does it improve the position of the plaintiff as to the authority?

Mr. Henderson: Well, I assume this, that if the Government brings an action for a penalty and assumes to do something, unless they have power to do it at the time nobody can ratify something that has been done. I just assumed, even without trying to follow it through, if it has to do with any proceeding that has to do with a penalty, you can't ratify something, you can't bring it into life for the purpose of the action here. The statute of limitations would run on this, you see, nominally.

The Court: Now, that is something. When was this case brought? [176]

Mr. Henderson: This was July, '42.

The Court: When was the case brought?

Mr. Wagner: '43?

Mr. Henderson: July, '43.

The Court: July, '43?

Mr. Wagner: That is right.

Mr. Henderson: And they brought it within—they just had, I believe, about thirty days in which to bring it, if I am not mistaken.

Mr. Wagner: That is right.

Mr. Henderson: Now, then, if they couldn't bring it within thirty days later, obviously nobody after the time the limitations had expired could breathe life into something that didn't exist at that time. Now, without even trying to analyze the effect of it, that was my conclusion with regard to the efficacy of it.

The Court: The new matter of this Revised General Order No. 3, Mr. Wagner, appears to be the second paragraph of (a)?

Mr. Wagner: Yes, that is right.

The Court: The first paragraph is entitled, "Institution of and intervention in civil proceedings". Is that the same as in the original file?

Mr. Wagner: I believe so, yes.

The Court: Now, I am just trying to read out loud, and you can copy it from the order a little later, if you want to: [177]

"The Price Administrator does hereby ratify, approve and confirm all acts done and all proceedings had or taken by an attorney-at-law regularly admitted to practice in any state, territory, or district, purporting to act in the name of or on behalf of the Price Administrator in any suit, action or proceeding heretofore at any time brought or purporting to be brought by the Price Administrator in any court of the United States or of any state, territory or district, said ratification, approval and confirmation to have the same force and effect as if specific authority to institute and conduct such suit, action or proceeding had been expressly granted by the Price Administrator to such attorney immediately prior to the commencement of such suit, action or proceeding. Without in any manner limiting the generality of the foregoing, the Price Administrator does hereby ratify, approve and confirm all acts done and all proceedings had or taken by

any such attorney in instituting, maintaining and prosecuting any and all suits, actions and proceedings of whatsoever nature heretofore at any time brought or purporting to be brought in the name of the Price Administrator under the provisions of Section 205(a) of the Emergency Price Control Act of 1942 to enjoin violations of said act or any order, schedule or regulation thereunder, or under the provisions of Section 205(e) of said act as originally enacted, or as amended, to enforce any liability created by said section"—that, [178] Mr. Wagner, is the three times the overcharge?

Mr. Wagner: Yes, 205.

The Court: "—or under the provisions of Section 205(f) of said act to revoke the license of any person licensed under said act, or under Section 202 of said Act to enforce compliance or obedience to any subpoena, order or requirement issued or purporting to be issued under said section, or under subdivision 6 of sub-section (a) of Section 2 of the Act of June 28, 1940 (54 Stat. 676) as amended, to enforce compliance with, or obedience to, or to enjoin violations of, or to enforce any liability or duty created by, any rule, regulation, order, or subpoena issued under said sub-section (a)."

I wonder if this was put in the Federal Register?

Mr. Wagner: Yes, I think the notation is at the conclusion.

The Court: Yes, "Issued 9-7-44, 9-FR 11137 (effective 9-7-44)."

Now, in this Crawford and Doherty case the acts complained of were committed in 1942?

Mr. Wagner: 1942, and——

Mr. Henderson: Up to March, 1943.

Mr. Wagner: Yes, some in the early part of '43. Up to March 10th, I believe.

The Court: The statute of limitations is a year, isn't it, in this Price Control Act? [179]

Mr. Wagner: That is right, your Honor.

The Court: Why wouldn't he have had a year?

Mr. Wagner: The transactions that occurred that were involved in the action commenced occurring on August 1st of 1942. Our action was instituted, I believe, very close to the end of July in 1943.

The Court: Why wouldn't you have had a year from March, '43?

Mr. Wagner: Well, considering each transaction, together with the language of the previous act, which I believe commenced the statute running from the completion of the delivery date. would, of course, bar a right of action, of any transaction at which the delivery was more than one year prior hereto.

The Court: There wasn't a delivery after——

Mr. Wagner: That is right, there were a large number of deliveries continued over the period of time.

The Court: That statute of limitations to which you raise question, Mr. Henderson, only applies to part?

Mr. Henderson: That would have expired in March, 1944, and this didn't go into effect until September, 1944, so still what I said did relate to the first part, yes, but, in any event, none of it was within the statute of limitations. That is, the statute of limitations would have expired—they must have brought the action, in any event, not later than March, [180] 1944, and this ratification didn't take place until September.

The Court: Mr. Reporter, will you transcribe what has been said this morning and see that it is included in the other proceedings in this case.

All right, Gentlemen,—

Mr. Henderson: I want to be heard on the reply. To get before your Honor what we had in mind, let me read a part of VIII. The first part of VIII is as was originally written by counsel for the Government:

“The Court finds that on or about the 13th day of April, 1942, defendant increased its price schedule to Tuerck-MacKenzie and Bingham Company to prices above those theretofore charged said respective purchasers for similar castings: that in the early part of November, 1942 defendant entered into an arrangement with the aforesaid respective purchasers to render invoices for castings delivered to them after that time upon the basis of the increased price schedule, but that notwithstanding such invoices it was understood that such purchasers would pay only upon such invoices the amount de-

terminated by computation on the original or unrevised price schedule, or on the basis of the prices prevailing before the increase, and that the excess or difference between the amount shown by the invoice and the amount paid would be retained by such purchaser pending the determination of the validity of the increased price schedule; that since the early part of November, [181] 1942 the defendant has continued, during the time referred to in Plaintiff's complaint, to render to the aforesaid purchaser invoices and to make deliveries and receive payment in pursuance of the foregoing agreement."

Now, let's assume we had, not the order dismissing this, but the question on the right to a determination as to whether or not we have violated the price schedule. If we have not collected, and if our agreement is specific that we are not going to take that money, if it is ultimately determined that the price schedule, our increased price schedule, is invalid, we can't collect the money, so how is the sale made? You can't say that the sale is made on the increased price schedule. You have to say that the sale is made on the basis of the original price schedule, contingent, however, that we may recover, if the other is determined to be effective, the increased price schedule.

Now, I know the position of counsel. They take the position that even the rendering of invoices makes us liable, but that can't be the meaning of the law; that can't be the meaning of the law, be-

cause you can't change the law of contracts. If I deliver something to a man and say, "Here, I am going to charge you this and let you pay this. However, understand, if I am permitted to charge this increased price you are going to have to pay that."—Now, then, your Honor has determined that we didn't establish this right to the increased [182] price schedule, therefore, we can't in an action at law recover from any of these people this amount of money, so we have been paid according to the original price schedule and we can't collect the rest of the money.

Well, now, was it contemplated that we would pay a penalty on something when we haven't collected the money on it? Now, supposing you had to render a judgment here, do you say that we can't collect a difference, this excess, it is still in the hands of these people and we never can collect, yet we must pay to the Government the difference? If so, why?

Now, it is our contention that we have established this. As a matter of fact, there wasn't any question about this. This is undisputed as far as the evidence is concerned. This is a fact. If by any chance the Court should reverse this Court on the basis of the ground of dismissal that they didn't have the right to bring the suit, we are then back in court on the question of this price; we won't have that court, to say, "Here, we want you to consider whether we have made a sale or not. These are the facts," and we think we are entitled to have

that in there, in view of the fact that it was undisputed as far as the evidence was concerned.

Mr. Wagner: First, your Honor, the evidence that was used in order to establish this was a letter that was written by myself to three of the purchasers based upon figures that Crawford and Doherty had given to us, given to our office, the [183] purpose of those letters being to have confirmations from the three purchasers as to the facts in connection with the withheld funds. There were no confirmations that ever came from any of the purchasers. The objection that was directed to the testimony and that evidence was based upon the fact that the evidence, that much evidence, was not admissible to establish the fact of the withholdings. Further, it is certainly my understanding that it was not entirely a purpose of withholding. It was one wherein, after some period of time, after payment had been made for a great number of these transactions, then certain amounts were offset as against the excessive or illegal charges that previously had taken place. Now, those offsets were carried on over some period of time, and just exactly what the status of each of those accounts is does not appear in the record, other than the figures as indicated by those particular letters, which we feel are not evidence of the agreement nor of the amounts withheld at all.

Now, in connection with the other point that counsel makes, of course I think that if a sale and de-

livery is made and that consideration passes, there isn't any question about it. If the price is illegal, that the claim exists. If merely the commodity or the items are delivered and a billing is made for it and no payment whatsoever is made, then counsel might have some ground for argument, but that was not the case, in any event, under these circumstances, that is, the ones in this [184] case, and, therefore, I think that the inclusion of that part of the defendant's testimony and the evidence which was adduced is certainly not properly included in the findings.

The Court: Didn't you argue in an earlier case—contend, rather, that the act was violated where the charge was made, even though the account had not been paid?

Mr. Wagner: I don't recall having argued that, your Honor. That has been the position of the Office of Price Administration consistently, however, and if that were the case here I would so argue, but that is not the case here, and the evidence upon which this finding is predicated we believe is not sufficient to warrant it.

The Court: Well, isn't it sufficient to warrant it because of the pertinency to the defense administration?

Mr. Wagner: I don't see how it can be argued. Most assuredly, all of the deliveries and the invoicing at the excessive prices were known to be in violation of the price ceilings that the Crawford and Doherty Foundry Company were bound to, and

that the continuation of that practice, known to be in violation of the Price Act and the regulations, and objected to by the Office of Price Administration at the time, could not be said to be in good faith, I don't believe.

The Court: Well, I am not asking you to commit yourself at all to the proposition that the good faith statute was established here by this alone or in combination with any other. [185] All I want to know is if you are willing to go along—or I won't press you to say that, even—that this has some bearing on the question of good faith. It would be for another court to say whether it had application otherwise.

Mr. Wagner: Well, as I say, my answer to that question was necessarily qualified. If there were other circumstances present, such as the fact that the vendor didn't know what his price ceilings were, or didn't know that his sale was controlled by regulation, and in order to be sure of himself didn't make a charge at the time of delivery or at any time until he ascertained what his ceiling was, there is another question, but those circumstances aren't present in this case at all.

The Court: I know. Thank you. I will work this up right soon.

Mr. Henderson: Of course, there is one thing on which counsel is in error, when he says that was the only testimony. That was cumulative. There were letters. Mr. Cord and Mr. Stirnweis testified positively to this.

The Court: I think I shall just include the finding.

Mr. Wagner: There was one other matter: There was no mention of any finding at the conclusion of the trial on the question of injunction.

The Court: That is right, there was an injunction asked for, too, wasn't there?

Mr. Wagner: Yes. [186]

The Court: That slipped my mind. Well, is the judgment order broad enough to cover that? The judgment is for the defendant.

Mr. Wagner: The judgment is merely one of dismissal on the one particular ground.

The Court: Regardless of the ground, that relief prayed for would fall with the dismissal generally.

Mr. Wagner: That was my assumption.

The Court: All right, all right, that clears it up, then.

(Whereupon proceedings herein on December 20, 1944 were concluded.) [187]

[Title of District Court and Cause.]

REPORTERS' CERTIFICATE

I, Alva W. Person, hereby certify that I reported in shorthand all of the proceedings had and evidence given upon the trial of the case wherein Chester Bowles, Administrator, Office of Price Administration, is plaintiff, and Crawford and Doherty

Foundry Company, an Oregon corporation, is defendant, Civil No. 2124, before the Honorable Claude McCulloch, Judge, on December 12 and 13, 1944; that I have prepared a transcript from my shorthand notes, and the foregoing and hereto attached 172 pages of transcript, numbered 1 to 172, both inclusive, contains a full, true and correct record of all of the proceedings had and evidence given upon said trial.

I, Cloyd D. Rauch, certify that I reported in shorthand on December 20th, 1944, beginning at 10:00 o'clock A. M., the further proceedings concerning the Findings and Conclusions of law, and hereafter reduced the same to typewriting, and the proceedings set forth in pages 173 to 187, both inclusive, are [188] the actual proceedings reported by me.

In Testimony Whereof, We have hereunto set our hands, this 6th day of March, A. D. 1945.

ALVA W. PERSON

CLOYD D. RAUCH [189]

[Endorsed]: No. 11025. United States Circuit Court of Appeals for the Ninth Circuit. Chester Bowles, Administrator, Office of Price Administration, Appellant, vs. Crawford and Doherty Foundry Company, an Oregon corporation, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the District of Oregon.

Filed April 3, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the Circuit Court of Appeals of the United
States in and for the Ninth Circuit

No. 11025

CHESTER BOWLES, Administrator,
Office of Price Administration,
Appellant,

v.

CRAWFORD & DOHERTY FOUNDRY COM-
PANY,
Appellee.

STATEMENT OF POINTS

On the appeal taken in the above entitled action
the appellant, Chester Bowles, Administrator of the

Office of Price Administration, will urge and rely upon the following points:

1. The District Court erred in finding as a fact or concluding as a matter of law that Marine Electric Company was a purchaser of the same class as Tuerck-MacKenzie Company, Bingham Pump Company, Willamette Iron and Steel Corporation and Iron Fireman Manufacturing Company.

2. The District Court erred in finding that the defendant made or entered into any of the agreements or arrangements as set forth in the findings of fact, and in failing to hold and conclude as a matter of law that even if said agreements or arrangements had been made defendant violated Maximum Price Regulation 244 by selling or delivering commodities accompanied by or under invoices showing prices higher than those permitted by said regulation.

3. The District Court erred in finding as a fact and concluding as a matter of law that the attorney or attorneys who instituted this action on behalf of appellant were without authority to do so.

4. The District Court erred in dismissing the action.

5. The District Court erred in failing to award

judgment in favor of appellant as prayed for in the complaint.

HERBERT H. BENT

Acting Regional Litigation
Attorney

FRANZ E. WAGNER

District Enforcement Attorney
Attorneys for the Appellant

[Endorsed]: Filed May 29, 1945. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD

Appellant herein designates the entire certified transcript, including all exhibits, to be contained in the printed record on appeal herein.

HERBERT H. BENT

Acting Regional Litigation
Attorney

FRANZ E. WAGNER

District Enforcement Attorney
Attorneys for Appellant.

[Endorsed]: Filed May 29, 1945. Paul P. O'Brien,
Clerk.

Title of Circuit Court of Appeals and Cause.]

ORDER

The parties hereto having by stipulation so agreed is now by the Court

Ordered: That in printing the transcript here- the Court omit Exhibits Nos. 8, 9, 10, 15, 16, 17, 19, 21 and 25 in the Court below, but that said exhibits may be considered by this Court on this appeal as fully as though printed.

Dated: June 12, 1945.

FRANCIS A. GARRECHT

Circuit Judge

[Endorsed]: Filed June 12, 1945. Paul P. O'Brien,
Clerk.

Title of Circuit Court of Appeals and Cause.]

STIPULATION

It is hereby stipulated and agreed between the above entitled parties by and through their respective attorneys that defendant's exhibits numbered 8, 9, 10, 15, 16, 17, 20, 21 and 25 may be omitted from the printed record or transcript on appeal herein but that said exhibits may still be considered by the Court as a part of the record on said appeal.

In accord with the Designation of Record herein in file, all exhibits will be contained in said printed

record on appeal, save and except as hereinabove indicated they be omitted.

HERBERT H. BENT

F. E. WAGNER

Of Attorneys for Appellant

WILBER HENDERSON

Of Attorneys for Appellee

[Endorsed]: Filed June 12, 1945. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT BILL OF PARTICULARS
NEED NOT BE PRINTED

The parties hereto having by stipulation so agreed
it is now by the Court

Ordered: That in printing the transcript herein
the Court omit the Bill of Particulars filed in the
Court below, but that said Bill of Particulars may
be considered by this Court on this appeal as fully
as though printed.

Dated: June 27, 1945.

FRANCIS A. GARRECHT

Circuit Judge

[Endorsed]: Filed June 27, 1945. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated And Agreed between the parties to the above entitled appeal, by and through their respective attorneys, that the Bill of Particulars filed in the District Court in the said action and heretofore certified and transmitted to the Circuit Court of Appeals, may be omitted from the printed transcript of record and may be considered by the Court as a part of the record on the said appeal.

Dated this 12th day of June, 1945.

F. E. WAGNER

Of Attorneys for Appellant

WILBUR HENDERSON

Of Attorneys for Appellee

[Endorsed]: Filed Jun 27, 1945. Paul P. O'Brien,
Clerk.

